
(2012) 08 DEL CK 0279
In the Delhi High Court
Case No : CS (OS) 2247 of 2012

Mr. Shivraj Gupta

APPELLANT

Vs

Mr. Deshraj Gupta and Others

RESPONDENT

Date of Decision : 31-08-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Hindu Succession Act, 1956 — Section 25
Limitation Act, 1963 — Section 3, 9

Citation : (2012) 08 DEL CK 0279

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Vikas Dhawan with Mr. Abhimanyu Mahajan, for the Appellant;

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J

I.A. No. /2012 (for amendment)

This application filed in Court be numbered. The application for amendment as per the rules of this Court ought to be accompanied by the proposed amended plaint. The application does not attach the proposed amended plaint setting out the proposed amendments, however, I overlook this technical default and allow the application and the paras 30A to 30D therefore will be treated as part of the plaint already filed.

I.A. stands disposed of.

+ CS(OS) No. 2247/2012

1. On 27.7.2012, the following order was passed:-

I.A. No. 13518/2012 (U/s 151 CPC for condonation of delay in re-filing)

For the reasons stated in the application, application is allowed and delay in re-

filing is condoned.

Application stands disposed of.

I.A. No. 13517/2012 (U/s 151 CPC for exemption)

Exemption allowed subject to the condition that original documents will be filed in accordance with law.

I.A stands disposed of.

CS(OS) 2247/2012 & I.A. No. 13516/2012 (U/o 39 R 1 and 2 CPC)

1. This suit is limited to seeking the reliefs of declaration and injunction on the basis of Section 25 of the Hindu Succession Act, 1956. Section 25 of the Hindu Succession Act reads as under:-

25. Murderer disqualified.--A person who commits murder or abets the commission of murder shall be disqualified from inheriting the property of the person murdered, or any other property in furtherance of the succession to which he or she committed or abetted the commission of the murder.

2. In terms of Section 25, a murderer or a person who abets the murder of a person is not entitled to inherit the property of the person who is murdered.

3. The case of plaintiff is that the defendants have murdered the father of the plaintiff. I may state that the plaintiff, defendant No. 1 and defendant No. 4 are the sons of allegedly murdered father Lala Hansraj Gupta and who admittedly died on 3.7.1985. Defendant nos. 2 and 3 in the suits are sons of defendant No. 1 herein.

4. Ex facie, it is obvious that this suit is barred by time as per Article 113 of the Limitation Act, 1963. However, though I would like to hear the learned senior counsel for the plaintiff further, however, it has transpired during the course of hearing that between the parties to this suit, and probably there may be other parties, there are litigations pending with respect to estate of deceased Lala Hansraj Gupta. In my opinion, plaintiff is guilty of deliberate concealment of these litigations, and in which litigations, the stand of the present plaintiff would be or would have to be that which is stated in the present suit. In fact, if this plea is available in the earlier litigation, and this plea if not taken, the same would be barred by constructive res judicata as per Section 11 of CPC in subsequent litigations.

5. In order to enable me to pass appropriate orders, it is necessary that the plaintiff files the entire list of litigations, giving the details of those litigations in brief, as also the respective stands of parties, and if so required, supported by necessary documents, so that a decision can be arrived at as to the maintainability of this suit.

6. Learned senior counsel for the plaintiff, on instructions states that he needs a period of two weeks to file the necessary affidavit giving the appropriate

particulars and the documents.

7. List on 31st August, 2012.

The aforesaid order and the contents of the plaint show that plaintiff is son of late Lala Hansraj Gupta. The defendant Nos. 1 and 4 are the other sons of late Lala Hansraj Gupta. Defendant Nos. 2 and 3 are sons of defendant No. 1. As per the case stated in the plaint, the defendants are guilty of murder of late Lala Hansraj Gupta who was the father of defendant Nos. 1 and 4 and the grandfather of defendant Nos. 2 and 3 and hence would stand disinherited from the estate of late Lala Hansraj Gupta.

2. Admittedly, late Lala Hansraj Gupta died on 3.7.1985. However, according to the plaintiff, the right to sue in the present suit arose only on 25.10.2010 when an S.L.P., which was filed by the defendant No. 1 in the Supreme Court against the judgments of learned Single Judge of this Court dated 11.5.2009 dismissing the probate petition filed by the defendant No. 1 on the basis of the alleged Will of late Lala Hansraj Gupta dated 28.5.1985 and the Division Bench on 14.7.2010 in FAO(OS) No. 237/2009 affirming the judgment of the learned Single Judge, was dismissed. Paras 23 to 27 and 31 and 32 of the plaint are relevant inasmuch as they touch upon the issue which I am deciding today of the suit being barred by limitation. These paras read as under:-

23. The Defendant No. 1, upon the death of Lalaji, propounded the false Will dated 28-05-1985 as the last Will and testament of Lalaji. A Test Case bearing No. 62/1985 was filed by Defendant No. 1 seeking probate of the said false Will dated 28.05.1985. The Defendant No. 4, in pursuance of the common intention of accelerating the succession to the estate of Lalaji and for financial gains which was the motive of murdering Lalaji, supported the Test Case bearing No. 62/1985 and filed a reply to the probate petition, claiming the document dated 28.05.1985 was the last Will and testament of Lalaji.

24. By a judgment dated 11-05-2009, the Ld. Single Judge held that the document dated 28-05-1985 purporting to be last Will of Lalaji, was not a genuine document.

25. The Defendant No. 1 filed an appeal before the Division Bench of the Hon''ble Delhi High Court which was also dismissed by a judgment and order dated 14-07-2010. Consequent upon the decision of the Division Bench of the Delhi High Court in FAO(OS) 237/2009, the original order passed by the learned Single Judge dated 11-05-2009 in the Test Case No. 62/85 merged in the appeal order dated 14-07-2010.

26. The Defendant No. 1 filed a SLP being SLP (Civil) No. 28437/2010 before the Hon''ble Supreme Court of India which was also dismissed by an order dated 25-10-2010.

27. The Defendant No. 1 further filed a Review Petition being Review Petition (Civil) No. 2286/2010 against the order dated 25.10.2010 before the Hon''ble

Supreme Court of India which was also dismissed by an order dated 27-01-2011.

XXXX XXXX XXXX

31. The cause of action accrued in favour of the Plaintiff when after the decision dated 14-07-2010 of the Division Bench of the Delhi High Court in FAO (OS) No. 237/09 the Defendant Nos. 1 and 4 threatened to assert a right to succeed to the estate of Lalaji as descendants from the line of succession of Lalaji. Despite the Division Bench upholding the original order of the learned Single Judge dated 11-05-2009 and finding that the document purporting to be the Will and testament of Lalaji was not a genuine document, the Defendant Nos. 1 and 4 continued to assert their right to succeed to the estate under intestate succession. During the entire period when the Test Case No. 62/85 was pending, the whole estate of Lalaji was tied up in the Test Case. There was no clear threat that the Defendant Nos. 1 and 4 would acquire a share in the estate of Lalaji. The threat became clear and unequivocal after the estate had become available for distribution among the legal heirs after the judgment of the Division Bench dated 14-07-2010 in FAO(OS) No. 237/09 was rendered. Accordingly, after 14-07-2010, a cause of action arose for the Plaintiff to file the present suit for declaration and consequent reliefs.

32. The present suit is not barred by limitation as the cause of action accrued after 14-07-2010 consequent upon the decision of the Division Bench in FAO(OS) No. 237/09 and the estate of late Lalaji becoming available for distribution.

3. Paras 30A to 30D of the plaint as per amendment application allowed today read as under:

30A. The plaintiff states that with the filing of the test case being Test Case No. 62 of 1985, the estate of Lalaji was tied up in litigation and, as such, was not available for distribution. The Plaintiff, during the time when the probate proceedings were pending, was not under any clear or unequivocal threat from the Defendants that they would infringe the right of the Plaintiff to seek necessary orders for preventing the Defendants from inheriting and/or succeeding to the estate of Lalaji as descendants.

30B. That, the Defendants in the probate proceedings relied upon a document purporting to be a Will of Lalaji for claiming a share in his estate. That, the Will was yet to be proved and as the probate proceedings were pending, no right under the alleged Will could be exercised and the estate of Lalaji was not available for distribution to the Defendants. Accordingly, as the Defendants were claiming a right to the estate under the Will of Lalaji for which the probate was pending, there was no clear and unequivocal threat to the Plaintiff that the Defendants would be vested with a share in the estate of Lalaji.

30C. The Plaintiff further states that only after the decision was rendered by the Division Bench on 14-7-2010 affirming the decision of the Single Judge dated 11-5-2009, did the Defendants claim inheritance to the estate of Lalaji under

intestate succession. That, prior to the decision dated 14-7-2010, as no claim was made by the Defendants by way of the intestate succession, there was again no clear and unequivocal threat to the Plaintiff that the Defendants would infringe the right of the Plaintiff and inherit the estate of Lalaji. That the threat to the Plaintiff became clear and unequivocal only after 14-7-2010 when the Defendants threatened to inherit the estate of Lalaji upon the estate being free of the probate proceedings and available for distribution.

30D. The Plaintiff further states that in the probate proceedings, the Defendants had contended that Lalaji was in sound and disposing mind when he executed the alleged Will and he had voluntarily left the hospital as he wanted to be at home. The Plaintiff states that the case set up by Defendant No. 1 was that it was at the insistence of Lalaji himself that he left the hospital. That, after detailed evidence was recorded in the probate proceedings, the probate court examined the evidence and rendered its decision on 11-5-2009 holding that the Will was not a genuine document and inter-alia observed that Lalaji was removed by Defendant Nos. 1 and 2 for the purpose of getting the document purporting to be the Will of Lalaji executed. That, on 14-7-2010, the Division Bench finally affirmed the decision of the learned Single Judge and dismissed the appeal preferred by the Defendants. That, it is upon the decision of the final court of facts, i.e. the Division Bench, that the full magnitude of the actions taken by Defendant No. 1 with the support of Defendant No. 4 was known. That due to the pendency of the probate proceedings and the Will propounded by Defendant No. 1, various litigations inter se the parties and other members of the family came to be instituted in different courts. That, however, in view of the Will propounded by Defendant No. 1, the various litigations remained pending and made no progress.

4. Counsel for the plaintiff has very passionately argued that as per Article 113 of the Limitation Act, 1963, it is only when a right to sue arises would the limitation begin and the right to sue can only arise when a right is asserted and it is denied categorically by the opposite side and which is said to arise only after dismissal of the SLP. Reliance is sought to be placed on various judgments, however, since there cannot be doubt to the proposition of law that the limitation begins when the right to sue arises, I need not refer to these judgments.

5. Let us now examine that whether the suit is within limitation on the ground that the probate petition which was filed by the defendant No. 1 achieved finality on 25.10.2010.

6. A murderer, assuming that defendant Nos. 1 to 4 are murderers according to the plaintiff, will have no right, title or interest in the property of the deceased person who is murdered. This right, title and interest can either be a limited right, title and interest as a co-owner on account of dying intestate or a right, title and interest as a complete owner in the property if such a right is urged on the basis of a particular Will, and which the defendant No. 1 alleged by virtue of a Will dated 28.5.1985 in his favour. The existence or non-existence of the Will

has only the effect of enlarging or reducing the share than would otherwise be the position on intestacy, however, the entitlement to claim that no right, title and interest vests with the alleged murder, whether as a co-owner or a complete owner, has to arise when the alleged murder takes place. In this case, as already stated, the date of death of late Lala Hansraj Gupta is 3.7.1985. All these facts which are stated in this plaint were known to the plaintiff since 3.7.1985. Therefore, merely because a probate petition filed by the defendant No. 1 is dismissed on 25.10.2010, the same ultimately can only have the effect on changing the share, but, the conclusion of probate proceedings does not affect the right to sue which had arisen on the death of late Lala Hansraj Gupta on 3.7.1985. If late Lala Hansraj Gupta was murdered according to the plaintiff on 3.7.1985, and therefore the defendants were not entitled to any share in the properties much less as per the Will, the present suit ought to have been filed within three years of 03.07.1985 simply making the averment of the fact that defendants had murdered the late Lala Hansraj Gupta and therefore were not entitled to any share in the property, and which is the alleged right on the basis of the Will or if there is no Will even to co-ownership rights which would have arisen. There was no need to wait till the year 2012 for filing of a suit on the basis of a right to sue and a cause of action which had arisen on 3.7.1985.

7. Learned counsel for the plaintiff sought to argue that the right to sue only arose on dismissal of SLP because the defendants can be said to have asserted their rights as co-owners only thereafter. This argument however is misplaced because as already stated the existence or non-existence of a Will has only the effect of enlarging or reducing the share, but, the issue is not of the extent of right of the defendants but that they had no right whatsoever at all allegedly because defendants had murdered late Lala Hans Raj Gupta. The filing of the probate petition by defendants cannot arrest limitation because Section 9 of the Limitation Act says that once limitation begins to run no subsequent disability or inability stops the running of limitation.

8. In view of the above, the suit of the plaintiff is clearly barred by limitation in terms of Article 113 of the Limitation Act, 1963. This Court u/s 3 of that Act is duty bound to examine whether the suit is within limitation or not. The suit filed in the year 2012 on the basis of right to sue and cause of action which had accrued in the year 1985 i.e. 27 years back, is clearly barred by limitation. The suit is therefore dismissed as barred by limitation.