
(2013) 09 DEL CK 0077

In the Delhi High Court

Case No : IA 1376 of 2010 in CS (OS) 2238 of 2009

Mrs. Meena Tevary and Another

APPELLANT

Vs

Shri Jugal Kishore Ratnu and Others

RESPONDENT

Date of Decision : 12-09-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Court Fees Act, 1870 — Section 17
Penal Code, 1860 (IPC) — Section 34, 380, 457
Suits Valuation Act, 1887 — Section 7, 7(iv), 8

Citation : (2013) 138 DRJ 261

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : Sanjeev Sindhwani and Ms. Garima Prashad, Mr. Arpan Wadhwan, for the Appellant; Sandeep Sethi and Mr. Rajesh Yadav, Ms. Ruchira, S. Khosla for D-1 and Mr. Anand M. Mishra, for D-2, for the Respondent

Final Decision : Disposed Off

Judgement

Mukta Gupta, J.—By this application the defendant No. 1 seeks rejection of the plaint, inter alia, on the grounds that the suit is barred by limitation and has not been properly valued for the purposes of Court fees. Learned counsel for the defendant No. 1 submits that even as per Para 11 of the plaint it is evident that the defendant No. 1 applied for anticipatory bail before the Court of Additional Sessions Judge, Patiala House wherein vide order dated 31st July, 2006 and 7th August, 2006 reference is made to the general power of attorney and sale deed. As per the plaint even assuming that the plaintiffs did not have knowledge of the alleged forgery and fabrication when the FIR was got registered on 22nd July, 2006 they had sufficient knowledge and evidence of the alleged forgery on 31st July, 2006 and 7th August, 2006. The present suit was instituted on 22nd September, 2009 i.e. much beyond the period of limitation of three years. Even in the plaint in Para 27 the plaintiffs have alleged that the cause of action for filing the suit firstly arose on 21st July, 2006 and taking the case of the plaintiffs

as it is the suit was filed beyond three years of the cause of action. The complainant in FIR No. 860/2006 u/s 380 /457 /34 IPC registered at PS Malviya Nagar, i.e. the plaintiff No. 1 has duly mentioned the facts of forgery and fraud played upon her. Even during the hearing of bail application learned counsel for the plaintiff No. 1/complainant was present and thus the plaintiffs had due knowledge of the facts. Further the defendant No. 1 filed a civil suit being CS(OS) No. 1688/2006 wherein the plaintiff No. 1 filed a written statement on 8th September, 2006 allegedly claiming the documents to be forged. Thus, even taking the said date as the date of knowledge the present suit is barred by limitation. From the documents filed by the plaintiffs, it is evident that the suit is barred by limitation. Since the plaintiffs are claiming the relief of declaration of the general power of attorney and sale deed to be forged and fabricated, as per Article 56 of the Schedule to the Limitation Act, 1963, the limitation to file a suit to declare the forgery of an instrument issued or registered is three years and the time from which the period begins to run is when the forgery becomes known to the plaintiff. The plaintiff No. 1 was a witness to GPA dated 26th September, 2005 but in any event the GPA and sale deed were in her knowledge on 21st July, 2006/22nd July, 2006 when the FIR was got registered, on 7th August, 2006 when she filed a complaint with the Home Minister and further on 8th September, 2006 when she filed the written statement in the suit filed by the defendant. As per Article 58 of the Schedule to the Limitation Act the period of limitation is three years and the time from which period begins to run is when the right to sue first accrues. The right to sue for the first time accrued to the plaintiffs as per their own case on 21st July, 2006 when the FIR was lodged and thereafter when the defendant No. 1 filed the suit bearing number CS(OS) 1688/2006. Reliance is placed on Secretary, Ministry of Works and Housing Govt. of India and Others Vs. Mohinder Singh Jagdev and Others, ; Fakharooddeen Mahomed Ahsan Vs. Pogose and Others, ; State of Punjab and Another Vs. Balkaran Singh, ; Khatri Hotels Private Limited and Another Vs. Union of India (UOI) and Another, ; N.V. Srinivasa Murthy and Others Vs. Mariyamma (dead) by Proposed LRs. and Others, ; Mohan Lal Bhatnagar Vs. Kamlesh Kumari Bhatnagar and Others, and Satya Prakash Gupta & Anr. Vs. Vikas Gupta & Ors. RFA (OS) 23/2010 decided by this Court on 24th November, 2011. It is well settled that in an application under Order VII Rule 11 CPC even if the defendant's documents/pleadings are not required to be looked into, the documents filed along with the plaint can be looked into and can be read along with the averments made in the plaint. Reliance is placed on MAC Associates Vs. SP Singh Chandel and Another, and T. Arivandandam Vs. T.V. Satyapal and Another, . Further the plaint is liable to be rejected also on the ground that the plaintiffs have not properly valued the suit for the purposes of Court fees and have not paid proper Court fees. The valuation of the relief's for the purposes of Court fees is not the same as is given for the purposes of jurisdiction, contrary to Section 8 of the Suits Valuation Act. Hence the plaint be rejected.

2. Learned counsel for the plaintiffs/non-applicant on the other hand contends

that a holistic and meaningful reading of the plaint would show that the present suit filed on 22nd September, 2009 was well within the period of limitation. The plaintiff has clearly stated in the plaint that only after 25th September, 2006 the plaintiff No. 2 and her husband took steps and enquired as to how the documents have been forged and fabricated and thus appeared through an advocate and requested time for filing written statement vide order dated 4th October, 2006 in CS(OS) 1688/2006. It is well settled that at this stage only the averments made in the plaint are required to be seen and not the defence of the defendant. The plaint has to be read by way of demurrer believing the averments stated in the plaint to be true and correct. Further even as the question of limitation is a mixed question of law and facts, the plaint cannot be rejected and the same being a triable issue will have to be decided after the evidence is led as held in Ramesh B. Desai and Others Vs. Bipin Vadilal Mehta and Others, and Shyama Prasad Vs. Dayawati 2010 (2) AD (Del.) 142. The case of the plaintiff is covered under Article 59 of the Limitation Act, 1963 relating to cancellation or setting aside of an instrument or decree or for the rescission of contract wherein the period of limitation of three years starts when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside first become known to him. Thus, it is not the mere knowledge of forgery or fabrication of the document which gives the cause of action but the complete facts entitling the plaintiff to file the suit for cancellation of the instrument. The provision contemplates starting point of limitation as the knowledge of facts and not knowledge or date of documents. Article 59 of the Schedule to the Limitation Act being the specific Article dealing with the relief's with regard to cancellation/setting aside of instruments on the basis of frauds etc. is applicable in the present case and Article 58 which is a general provision seeking declaration will not be applicable. (See Prem Singh and Others Vs. Birbal and Others,). In the alternative it is stated that since the starting point of limitation is purely a question of fact and calls for evidence, the plaint cannot be rejected under Order VII Rule 11 CPC. The reliance of the learned counsel for the applicant/defendant No. 1 on the written statement filed by plaintiff No. 1 is misconceived, as he has not relied upon the written statement of plaintiff No. 2 which was filed in November, 2006 from which date the suit is well within the period of limitation of three years. The plaint cannot be rejected in part or partially. Reliance is placed on D. Ramachandran Vs. R.V. Janakiraman and Others, and Sunila Wadhwan and Others Vs. Perfect Drugs Limited and Another, . Ultimately if this Court comes to the conclusion that the suit is barred by limitation qua plaintiff No. 1 it could dismiss the same and allow a decree in favour of plaintiff No. 2 but no truncated rejection of the plaint can take place. As regards the issue relating to valuation of the relief's, it is submitted that relief's have been properly valued. The relief with regard to cancellation of sale deed has been valued at Rs. 1,20,60,000/- which is the apparent value of the sale deed sought to be cancelled. Similarly, the relief in respect of GPA has been fixed at Rs. 35,100/- being the value of the document. The relief of possession, being consequential relief as per averments in the plaint, is prayed as a consequence to the main relief of declaration in

respect of sale deed and therefore single valuation is warranted. Reliance is placed on Balaram Mandal Vs. Sahebjan Gazi and Others, .

3. Heard learned counsel for the parties. Briefly the facts are that the plaintiffs have filed the present suit for declaration, cancellation of sale deed/general power of attorney and consequential possession in respect of property bearing No. B-45, Soami Nagar, New Delhi. It is stated that Shri Bishan Avtar Tevary (in short B.A. Tevary) the late husband of plaintiff No. 1 and father of plaintiff No. 2 was the owner of the suit property. An agreement to sell dated 26th November, 2004 was executed between him and defendant No. 2 by which he agreed to sell the suit property for a sum of Rs. 3,50,00,000/-. The defendant No. 2 made certain payments by drafts, however she could not make the entire payments and an amount of Rs. 2,24,40,000/- remained unpaid. In the month of December, 2005 when Shri B.A. Tevary was admitted in the hospital as critically ill, the defendant No. 2 got the power of attorney executed in her favour on the pretext that she wanted to apply for a loan to pay the remaining sale consideration. Subsequently Shri B.A. Tevary died on 8th March, 2006. The balance sale consideration was never offered by defendant No. 2 thereafter. On 17th December, 2005 the husband of the plaintiff No. 1 was admitted in Batra Hospital in Intensive Care Unit due to Diabetes Mellitus, Hypertension, Coronary Artery disease with recent Myocardial infection and conjunctive heart failure and remained admitted up to 6th January, 2006 out of which for 9 days he remained in ICU and was mainly on oxygen with unstable mental state of mind, thus, unable to execute any document. On 17th December, 2005 itself the defendant No. 2 paid Rs. 18,00,000/- and on 21st December, 2005 paid further Rs. 14,64,000/-. Thereafter on 26th December, 2005 all of a sudden defendant No. 1,2&3 along with one Vijay Kumar and two other persons reached Batra Hospital and despite protest by the plaintiff No. 1 obtained the signature and thumb impression of Shri B.A. Tevary while he was in an unstable state of mind. The defendant No. 2 had shown a power of attorney consisting of three pages out of which two were stamp papers. The defendant No. 2 also required plaintiff No. 1 to put her signatures on the first and last three pages of GPA along with thumb impression on the rear portion of the first page without giving much time to read the said general power of attorney. Thereafter, defendant No. 2 did not pay any amount although a sum of Rs. 2,24,60,000/- was still due from the defendant No. 2. On 22nd July, 2006 when plaintiff No. 1 had gone to Agra, she received a call that her residence situated at B-45, Soami Nagar, New Delhi had been burgled. The plaintiff No. 1 rushed back to Delhi and saw that her assets and Furnitures were taken away along with her personal Steel Cupboard which contained important documents, property documents including the original sale deed dated 9th December, 1968 of property No. B-45, Soami Nagar, New Delhi, fixed deposits worth Rs. 70,00,000/- and other articles. The plaintiff No. 1 lodged FIR No. 860 u/s 457 /380 /34 IPC at PS Malviya Nagar, New Delhi. When the matter was pending investigation, the defendant No. 1 filed a suit being CS(OS) 1688/2006 against the plaintiff No. 1 before this Court and was granted an ex-

parte stay that defendant No. 1 be not dispossessed from the ground floor and second floor of property No. B-45, Soami Nagar. At that stage the plaintiff No. 1 was unable to understand as to how defendants cheated, played fraud and fabricated the documents. Further the plaintiff No. 1 being an old lady of 76 years of age was unable to trace out as to how fraud had been played and documents forged and fabricated. Thereafter the plaintiff No. 2 and her husband went deep into the matter and found out that by forging and fabricating the documents, defendants created a GPA of 4 pages in the name of Shri B.A. Tevary which was never executed by him nor was a sale deed ever executed by him. Thereafter the plaintiff No. 2 along with her husband filed their written statement dated 14th November, 2006. Further the GPA, stamp papers having been allegedly executed on 26th December, 2005 were purchased by defendants and the GPA allegedly presented for registration with the Sub-Registrar Mehrauli on 27th December, 2005 was without the signatures of Shri B.A. Tevary since he was admitted in Batra Hospital from 17th December, 2005 to 6th January, 2006. The power of attorney has been alleged to be registered on 30th December, 2005 by mentioning the said documents to have been presented in the hospital. The plaintiffs after filing of the suit by defendant No. 1 i.e. CS(OS) 1688/2006 made extensive enquiries and investigation as to how the documents were got forged and fabricated, since GPA executed by Shri B.A. Tevary was not running into 4 pages and sale deed was never executed nor the sale consideration was received and filed the present suit on 22nd December, 2009, inter alia, praying that the sale deed dated 28th December, 2005 and general power of attorney dated 26th December, 2005 be declared null and void with consequential relief of possession of ground and second floor of the suit property and a decree of permanent and mandatory injunction.

4. It is well settled that for rejection of the plaint under Order VII Rule 11 CPC only the averments in the plaint and the documents filed by the plaintiff can be looked into. Further if it is mixed question of facts and law it is a triable issue, the plaint cannot be rejected on the application under Order VII Rule 11 CPC and the question of limitation has to be decided as an issue during trial after the parties have led the evidence.

5. In the present case what forbids me from allowing this application of defendant No. 1 is that even assuming there is merit in the contention of the learned counsel for the defendant No. 1 qua plaintiff No. 1, however in the application there is no knowledge of fraud and forgery attributed to plaintiff No. 2. The entire thrust is on the knowledge of the plaintiff No. 1 qua forgery and fabrication, thus the suit being beyond the period of limitation. None of the documents mentioned or averments made in the application relate to plaintiff No. 2. The plaint and the documents which are only to be looked into at this stage clearly state that the cause of action further arose when plaintiff No. 2 appeared through the counsel and time was granted to file the written statement in CS(OS) 1688/2006 before this Court and thereafter from 25th September, 2006 to 9th October, 2006 when the plaintiffs made thorough investigation as to how

fraud and cheating had been committed by forging and fabricating the GPA as well as sale deed besides other documents. It is further stated in Para 14 of the plaint that it is only after 25th September, 2006 that the plaintiff No. 2 and her husband took steps and enquired as to how the documents have been forged and fabricated and in the meantime the plaintiff No. 2 along with her husband appeared through the advocate and requested time for filing written statement vide order dated 4th October, 2006 and this Court granted four weeks time to file written statement. The plaintiff No. 2 and her husband continued to investigate the matter and were able to ascertain the factual position as to how fraud had been played and documents fabricated. Thereafter, plaintiff No. 2 filed her detailed written statement dated 14th November, 2006 in CS(OS) 1688/2006 and in the meantime on 10th October, 2006 a legal notice was served on the defendants by the plaintiffs mentioning therein the facts and circumstances so as to show that the defendants entered into a conspiracy and in connivance with each other forged and fabricated the GPA of four pages, sale deed, letters, receipts etc. to grab property of the plaintiffs. Thus, the suit is well within the period of limitation of three years from the date of knowledge to the plaintiff No. 2 as per the plaint.

6. In *D. Ramachandran Vs. R.V. Janakiraman and Others*, their Lordships held that it is elementary that under Order VII Rule 11 CPC the Court cannot dissect the pleadings into several parts and consider whether each one of them discloses a cause of action. Under the Rule there cannot be a partial rejection of the plaint or petition. Thus, even if the contentions of the learned counsel for the defendant No. 1 may merit consideration qua plaintiff No. 1 the same find no merit qua plaintiff No. 2. Since the suit cannot be rejected piecemeal the present application is liable to be dismissed on this count with liberty to the defendant to raise the plea of limitation this as an issue for adjudication and in case it is found that qua the plaintiff No. 1 or even plaintiff No. 2 the plaint is beyond the period of limitation, the same would be dismissed eventually. Similar view was taken by this Court in *Sunila Wadhwan and Others Vs. Perfect Drugs Limited and Another*, .

7. The next ground seeking rejection of the plaint is that the suit has not been valued in terms of Section 8 of the Suit Valuation Act, 1887. Learned counsel for the defendant No. 1 submits that the plaintiff has given separate valuation for the purposes of jurisdiction and the Court fees. Thus, in view of Section 8 of the Suit Valuation Act, 1887 the present suit is liable to be rejected. In the present case the plaintiff has valued the relief's of declaration, cancellation of sale deed and possession at Rs. 1,20,60,000/- separately for the purposes of jurisdiction, however for the purposes of payment of Court fees, it has been compositely valued at Rs. 1,20,60,000/-. Similarly, for the relief's of General Power of Attorney and for the cancellation thereof separate value has been taken at Rs. 35,100/-, however for the purposes of Court fees a single value has been taken. It is well settled that the plaintiff is free to value the suit. However, the value for the Court fees and value for jurisdiction must no doubt be the same in such cases.

8. In *Guru Ravi Das Jainti Samorah Samiti Vs. Union of India and Others*, this Court held:

(7) The question whether the plaintiff has been given an absolute right or option to place any valuation whatever on his belief was neither considered nor decided in the said case. It may sometime happen that in suits falling u/s 7 a plaintiff gives a particular value for the purposes of court fee and different value for the purposes of jurisdiction. The question in such cases naturally arises whether the Court can compel the plaintiff to adopt the value stated in his plaint for purposes of jurisdiction, in other words whether the plaintiff can be compelled to pay court fees on the value for purposes of jurisdiction as the value for the purposes of court fee also. Section 8 of the Suits Valuation Act provides that where in any suit other than those referred to in the Court Fees Act, Section 7 paras 5,6,9 and para 10, clause (d) court fees are payable ad valorem under the Act, the value determinable for the computation of court fees and the value of the purposes of jurisdiction shall be the same. In other words, so far as suits falling u/s 7 sub section (iv) of the Act are concerned Section 8 of the Suits Valuation Act provides that the value as determinable for the computation of court fees and the value for the purpose of jurisdiction shall be the same. There can be little doubt that the effect of provisions of Section 8 is to make the value for the purpose of jurisdiction dependent upon the value as determinable for computation of court fees and that is natural enough. The computation of court fees in suits falling u/s 7(iv) of the Act depends upon the valuation that the plaintiff makes in respect of his claim. The value for court fees and the value for jurisdiction must no doubt be the same in such cases.

9. Section 17 of the Court Fees Act, 1870 provides that when a suit embraces two or more distinct subjects, the plaint shall be chargeable with the aggregate amount of the fees to which the plaint in suit embracing separately each of such subjects would be liable under the Act. Since the present suit is based on three different causes of action and relief's have been claimed separately thereon, the total value of the suit for the pecuniary jurisdiction would be the sum of total values and even for the purposes of court fees the plaintiff is required to value the same separately and not together. This is the effect of reading Section 17 of the Court Fees Act, 1870 and Section 8 of the Suits Valuation Act, 1887 together. The test whether the suit embraces different subjects does not depend on the cause of action on which the plaint of the suit is based but depends on the basis of the claim and the right under which the claim is made. The claims of declaration, cancellation and possession are distinct based on different causes of action as the relief of declaration and cancellation are based on the basis of forgery and fabrication whereas the relief of possession is based on the factum of dispossession carried out by the defendants on 21st July, 2006. Thus, for the relief's sought, separate court fees is required to be paid. The plaintiff is required to pay separate court fees on different relief's claimed by the plaintiff. Thus, the plaintiff is directed to deposit the deficient court fees within eight weeks failing which the plaint would be liable to be rejected. Application is

disposed off accordingly.