(2014) 02 DEL CK 0096

In the Delhi High Court

Case No : Regular Second Appeal No. 199 of 2012 and CM No. 21160 of 2012

Nawal Kishore Mehta @ Nawal Mehta APPELLANT

Vs

Shashi Bansal @ Babli RESPONDENT

Date of Decision : 10-02-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Delhi Rent Control Act, 1958 — Section 14(1)(a)
Limitation Act, 1963 — Section 10 11 12 13 14

Citation : (2014) 4 AD 409 : (2014) 208 DLT 64

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : A.C. Bhasin and Mr. Amit Bhasin, for the Appellant;

Final Decision : Allowed

Judgement

Valmiki J Mehta, J.—This regular second appeal is filed by the appellant against the judgment of the first appellate court dated 1.2.2011 whereby the suit of the appellant-plaintiff has been dismissed as being barred by limitation. The following substantial question of law was framed by this Court on 21.2.2013:-

Whether the findings arrived at by the trial court are perverse, if so, to what effect?

2. Appellant-plaintiff filed a suit for declaration, injunction, recovery of arrears of rent of Rs. 93,960/- etc on the ground that the original owner of the property being Flat No. BH-610C, Shalimar Bagh, Delhi was one Sh. Ram Sarup who sold the same to Sh. Kewal Krishan Kamboj and who further sold the property to the appellant-plaintiff-Nawal Kishore Mehta in terms of the documentation dated 2.6.1998. Notice of attornment was pleaded to be sent to the respondent-defendant. Appellant/plaintiff further pleaded that the respondent-defendant relied upon forged and fabricated documents claiming purchase of rights in the suit property on 12.11.1994, and that these documents have been found to be forged and fabricated documents in the earlier proceedings before the Additional

Rent Controller titled as Shri Naval Mehta Vs. Smt. Babli @ Smt. Shashi Bansal bearing case no. E-155/2004/2001. Though the eviction petition before the Additional Rent Controller was dismissed, however, the issue with respect to forgery of the documentation dated 12.11.1994 claimed by the respondent-defendant became final only on passing of the judgment on 20.3.2007. It is thus argued by the appellant/plaintiff that the subject suit was accordingly filed within a period of three years from 20.3.2007 i.e. on 14.11.2008 and is not time-barred.

3. The appellate court dismissed the suit as being barred by time inasmuch as, the cause of action to cancel the documents alleged by the respondent-defendant in his favour dated 12.11.1994 arose on 14.12.2001 when the written statement was filed by the defendant in the court of Additional Rent Controller claiming rights on the basis of the documentation dated 12.11.1994. The relevant para of the impugned judgment is para 5 and which reads as under:-

5. Firstly, I shall consider whether the suit is barred by limitation in the background of the facts stated in the plaint itself and documents relied upon by the plaintiff. Section 3 of the Limitation Act, 1963 lays down that subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.

Part-III of the schedule, which has prescribed the period of limitation, relates to suits concerning declarations. Article 58 of the Act clearly says that to obtain any declaration, the limitation would be three years from the date when the right to sue first accrues.

The counsel for the plaintiff has contended that the right to sue accrued to the plaintiff on 20/3/2007 when his eviction petition U/s. 14(1)(a) of Delhi Rent Control Act was dismissed by the court of Ld. ARC and since the present suit has been filed within three years from the date of dismissal, the suit is within the period of limitation. On the other hand, the counsel for the defendant has argued that in her written statement to the eviction petition, the defendant had not only denied the right of the plaintiff in the suit property but had categorically claimed ownership on the basis of agreement to sell, receipt, GPA and will executed in her favour by the erstwhile owner Sh. Ram Sarup on 12/11/1994 and thus right to sue first accrued to the plaintiff on 14/12/2001 i.e. the date of filing of the written statement by the defendant. He has urged that since the plaintiff filed the present suit after the expiry of three years from the accrual of cause of action, the suit is barred by limitation.

It is well settled that cause of action for the purpose of Article 58 of the Act accrues when the right asserted in the suit is infringed or there is at least a clear and unequivocal threat to infringe that right. Keeping this principle in mind, let us know consider the facts of the case that emerge from the plaint. In para no-17 of the plaint, it has been clearly averred that the cause of action arose to the plaintiff firstly when he came to know about the forged, false and fabricated documents dated 12/11/1994 filed by the defendant during the pendency of the eviction petition and on various dates when the defendant was duly intimated by the plaintiff as well as the erstwhile owner regarding the sale of suit premises but the defendant failed to make the payment to the plaintiff since the date of the purchase of the flat in question. As pr the plaintiff''s own case, the suit premises was purchased by him on 02/06/1998 and eviction petition U/s. 14(1)(a) of Delhi Rent Control Act against the defendant was filed in the month of October-1998 (as mentioned in para no-6 of the legal notice dated 07/11/2008 sent to the defendant by the plaintiff). The plaintiff has placed on record the certified copy of the written statement/reply dated 14/12/2001 filed by the defendant to the said eviction petition. A perusal of the same shows that the defendant not only denied the relationship of landlord and tenant between the parties but also claimed ownership of the suit premises on the basis of the documents executed in her favour by the original allottee i.e. Sh. Ram Sarup in the year-1994. Thus the right to sue for declaration of his ownership in respect to the suit premises accrued to the plaintiff on 14/12/2001 when the defendant through her written statement made a clear and unequivocal assertion of her right in the property and refuted his claim therein. The very fact that the plaintiff examined Sh. Ram Sarup and Sh. Kamal Kishore Kamboj in the eviction petition to rebut the claim of the defendant and also preferred an application dated 25/09/2004 U/s. 151 CPC before the Ld. ARC for obtaining the opinion of handwriting expert with regard to the signature of Sh. Ram Sarup on the documents produced by the defendant show that the plaintiff had through out been aware of the assertion of ownership rights in the suit property by the defendant yet he slept over his right till 14/11/2008 and failed to seek declaration from the court of law within three years from 14.12.2001. From the averments made in the plaint and the documents produced and relied upon by the plaintiff, it is evident that the relief of declaration as sought by the plaintiff is clearly barred by limitation. The remaining reliefs i.e. recovery of arrears of rent and injunction being consequential in nature also fail.

Since I have come to conclusion that the present suit is barred by limitation, I do not deem it necessary to dwell upon the remaining two aspects of preliminary issues.

4. In my opinion, the first appellate court has erred in holding that the appellant-plaintiff was bound to file the suit within three years from 14.12.2001 inasmuch as, it was only when the judgment was passed by the Additional Rent Controller on 20.3.2007 that the appellant-plaintiff would have known the finality of his stand with respect to forgery and fabrication of the documents dated 12.11.1994 claimed by the respondent-defendant, and accordingly, the cause of action also accrued w.e.f. 20.3.2007 inasmuch as, for arising of a cause of action there has to be certainty with respect to the same and since the issue was alive in the eviction petition filed before the Additional Rent Controller, appellant-plaintiff had necessarily to wait for the conclusion of those proceedings before it can be said to be of one view or the other with respect to forgery of the documentation dated

12.11.1994.

In any case, looking at it from another manner that if the cause of action had accrued on 14.12.2001, I find that in a case such as the present, the cause of action had continued till 20.3.2007 when finality was achieved in the earlier proceedings before the Additional Rent Controller. Therefore, the present suit which is filed within three years from 20.3.2007, cannot be said to be barred by time when the same sought declaration of illegality of the documentation dated 12.11.1994 relied upon by the respondent-plaintiff to claim ownership in his favour. In my opinion, unless and until an Article in the Schedule of the Limitation Act, 1963 specifically talks of cause of action accruing on a specific date, rights which a plaintiff has, should not be extinguished or should not be allowed to be got lost by reading of an Article of the Limitation Act for construing extinction of the right/entitlement of a plaintiff.

In view of the above, the appeal is allowed answering the substantial question of law in favour of the appellant holding that there is perversity in the finding of the first appellate court holding the suit to be barred by limitation. The impugned judgment of the first appellate court is set aside. The first appeal before the first appellate court is accordingly revived for being decided on merits. Parties are left to bear their own costs.