

(2014) 10 DEL CK 0236

In the Delhi High Court

Case No : I.A. No. 14668/2013 in CS(OS) No. 1687/2012

Sangita Rehan and Others

APPELLANT

Vs

Surinder Kishan Grover and Others

RESPONDENT

Date of Decision : 13-10-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 6 Rule 17, Order 7 Rule 11, Order 7 Rule 11(a), 151

Citation : (2015) 218 DLT 305

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : S.N. Gupta and Naveen Kumar, Advocates for the Appellant; Anand Prakash, Advocates for the Respondent

Judgement

Manmohan Singh, J.—By this order, I propose to decide the abovementioned pending application being I.A. No. 14668/2013 filed by the applicant/defendant No. 7 for rejection of the plaint being time barred, under sub-Rules (a) & (d) of Rule 11 of Order VII CPC.

2. Brief facts of the case are that initially, the plaintiffs filed the suit for partition, possession as well as for mandatory and permanent injunction against 7 defendants. By order dated 30th May, 2012, the name of defendant No. 7 - North Delhi Municipal Corporation was deleted. As per the case of the plaintiffs, Late Sh.Trilok Chand Grover, grand-father of the plaintiffs and father of the defendants, died intestate. He was the owner of the suit property bearing No. V-246, Rajouri Garden, New Delhi which was purchased by him by a registered sale deed in 1966. His wife has already expired and his mother has also expired. Now, there are only four sons and three daughters of Sh.Trilok Chand Grover, who are entitled for 1/7th share each in the suit property. Out of those, three sons, namely, Tej Kishan, Prasad Kishan and Pyara Kishan have expired. So, their legal heirs have been impleaded as defendants No. 2A & 2B, plaintiffs and defendant No. 3. The fourth son, namely, Mr.Surinder Kishan Grover is alive and

he is in occupation of the suit property who is defendant No. 1 herein.

3. It is submitted that out of three daughters, one Raj Sachdeva has expired; her husband has also expired; so, her legal heirs have been impleaded as defendants No. 4A, 4B & 4C. The other two daughters, namely, Smt.Swarna and Smt.Shoba are alive; so they have been made as defendants No. 5 & 6.

4. The main thrust in the suit is that the plaintiffs and defendants No. 1 to 6 inherited 1/7th share each in the suit property, which the defendant No. 1 is refusing to partition and give the respective shares to the plaintiffs. The plaintiffs' father late Sh.Prasad Kishan Grover was asking about his share to defendant No. 1 but he used to avoid the partition by postponing it for one or the other reasons. After the death of Sh.Prasad Kishan Grover, his legal heirs, i.e. the plaintiffs (three daughters) were asking defendant No. 1 and others to partition the property as well as to give their share, i.e. 1/3rd out of 1/7th to each of them or 1/3rd in the property together to the three daughters of Sh.Prasad Kishan Grover, but defendant No. 1 is avoiding and postponing the same. However, in March, 2012, defendant No. 1 assured them that the suit property would be partitioned after some time. The plaintiffs realized that defendant No. 1 is avoiding the partition of the suit property and in fact, he has no intention to do so. Hence, the present suit has been filed by the plaintiffs.

5. During the pendency of the suit, the plaintiffs filed an application being I.A. No. 1676/2013, under Order 1 Rule 10 CPC for impleading one Chandeeep Singh Bhatia as defendant No. 7 and also under Order VI Rule 17 read with Section 151 CPC for allowing the amendment of the suit accordingly. It was stated in the application that defendant No. 1, Mr.Surinder Kishan Grover while filing the written statement has alleged that the suit property has been reconstructed and after being so reconstruction by collaborating, he has also the first and second floor of the property in favour of said Chandeeep Singh Bhatia by virtue of sale deed executed by defendant No. 1. In the written statement, defendant No. 1 has claimed that the suit property was inherited by him, as Sh.Trilok Chand Grover has left a Will in his favour. The plaintiffs in the amended plaint also sought a declaration that the said sale deed executed by defendant No. 1 in favour of defendant No. 7 in respect of first and second floor of the suit property be declared as null and void.

6. The said application was allowed by order dated 15th April, 2013 and Mr.Chandeeep Singh Bhatia was impleaded as defendant No. 7 who has subsequently filed the present application under Order VII Rule 11 read with Section 151 CPC, mainly, on the ground that the suit filed by the plaintiffs is time barred and there is no valid cause of action against the said defendant to file the present suit for partition. As the defendant No. 7 has purchased from defendant No. 1 the first and second floors of the suit property, he is the interested party to file the present application. It is alleged that after selling the said floors, the defendant No. 1 has lost his interest, therefore, the present application is maintainable. The prayer of the application is also supported by defendant No. 1

who is claiming ownership of the remaining portions.

7. The application is opposed by the plaintiffs. Learned counsel for the plaintiffs states that the present application is not maintainable as it is not based on any ground available for rejection of the plaint under Order VII Rule 11 read with Section 151 CPC. The plaintiffs have reiterated that the suit is not barred by limitation. It is alleged in the reply that the right of defendant No. 7 would be depending upon the right of defendant No. 1. There are many issues which are yet to be decided at the time of trial. Therefore, the application is not maintainable.

8. Both the parties have made their submissions. The defendant No. 1 is not opposing to the prayer made in the application, rather defendant No. 1 has filed all the original documents in order to show that the suit filed by the plaintiffs is not maintainable and it is barred by limitation.

9. It is settled law that an issue of limitation is not always a mixed question of law and fact. Where a suit, from statement in the plaint, can be said to be barred by time, thus, a case for rejection under Order VII Rule 11 CPC is made out. The Supreme Court in *N.V. Srinivasa Murthy and Others Vs. Mariyamma (dead) by Proposed LRs. and Others*, has held that if on a critical examination of the plaint, the suit seems to be clearly barred on the facts stated in the plaint itself, the plaint is liable to be rejected. In *Hardesh Ores Pvt. Ltd. Vs. Hede and Company*, , it was held that plaint can be rejected on the ground of limitation where the suit appears from the statement in the plaint to be barred by any "law" which includes the law of limitation. The Division Bench of this Court in *Snowwhite Apparels Ltd. Vs. K.S.A. Technopak (I) Ltd.*, also held that if reading of the averments in the plaint would admittedly establish that the suit is barred by any law which would include the Limitation Act also, the plaint would have to be rejected.

10. In *T. Arivandandam Vs. T.V. Satyapal and Another*, , it has been held that the Court, if on a meaningful - not formal reading of the plaint, finds it to be manifestly vexatious and meritless in the sense of not disclosing clear right to sue, it should exercise its power under Order VII Rule 11 CPC and clever drafting creating an illusion of cause of action should be nipped in the bud so that bogus litigation can be shut down at the earliest stage.

11. Article 58 of the Limitation Act, 1963 provides a limitation of three years for a suit to obtain any other declaration commencing from the date when the right to sue first accrues.

12. In the present case, it is the admitted position that Sh.Trilok Chand Grover had expired in the year 1976. The plaintiffs and their predecessors-in-interest did not take any steps for partition for a long period of time, rather the suit was filed 36 years after the death of Sh.Trilok Chand Grover. It appears to the Court that even the suit of the plaintiffs is also barred by the principles of estoppel, as the plaintiffs have not disclosed the material facts to this Court that Sh.Trilok Chand

Grover had executed a registered Will dated 15th May, 1970 which was admitted by all his sons and daughters after his demise on 19th December, 1976.

13. In the plaint, it is stated that late Sh.Trilok Chand Grover had expired intestate. The plaintiffs have also concealed the facts before this Court that the father of the plaintiffs late Sh.Prasad Kishan Grover had received a sum of Rs. 28,000/- (Rs.20,000/- vide cheque No. 241990 dated 8th March, 1979 and Rs. 8,000/- vide Cheque No. 241996 dated 21st April, 1979, both drawn on State Bank of India, Delhi University Branch, Delhi) from defendant No. 1 in terms of the said Will dated 15th May, 1970.

14. It is obvious and evident that their father Sh.Prasad Kishan Grover had accepted the Will without any protest, otherwise why he never asked for any partition during his lifetime and filed the suit. Although Sh.Trilok Chand Grover expired on 19th December, 1976. The plaintiffs being the legal heirs of Sh.Prasad Kishan Grover now cannot seek partition of the suit property after having taken benefit through their father under the registered Will dated 15th May, 1970 of late Sh.Trilok Chand Grover. Defendant No. 1 has filed the original pass-book and original deposit slip, in order to show that the father of the plaintiffs had received the amount.

15. It is settled law that while deciding the application under Order VII Rule 11 CPC, the defence and the documents filed by the defendants are not to be examined.

16. Thus, it is clear in the present case that the predecessor-in- interest of the plaintiffs had already received benefits under the Will dated 15th May, 1970 of late Sh.Trilok Chand Grover in March-April, 1979 and, therefore, the claim of the plaintiffs for partition of the suit property is barred by the principles of estoppel.

17. There is no cause of action in favour of the plaintiffs to file the suit under the provisions of Order VII Rule 11(a) CPC. The suit property was self-acquired property of late Sh.Trilok Chand Grover who expired on 19th December, 1976 and from thereafter, admittedly, the defendant No. 1 was in exclusive possession of the entire property by virtue of the Will dated 15th May, 1970. After the death of the father, defendant No. 1 was always in exclusive possession of the suit property.

18. It is not stated in the plaint that the father of the plaintiffs Sh.Prasad Kishan Grover ever occupied any portion of the suit property or was in constructive possession of the same along with defendant No. 1 after the death of his father.

19. Therefore, the plaintiffs have failed to show any cause of action in their favour. The suit for partition after 36 years of the death of Sh.Trilok Chand Grover is also barred by limitation.

20. As far as defendant No. 7 is concerned, the said defendant has purchased the first and second floors of the suit property from defendant No. 1 who had become owner thereon on the basis of the registered Will dated 15th May, 1970

executed by late Sh.Trilok Chand Grover.

The said Will was never challenged by any of the parties to the suit including the plaintiffs or their predecessor-in-interest. The same is of more than 30 years old.

21. The suit of the plaintiffs is, therefore, barred under the provisions of sub-Rule (d) of Rule 11 of Order VII CPC.

22. In view of the above, the plaint is rejected under the provisions of Order VII Rule 11(a) & (d) CPC. The application is accordingly allowed and disposed of.