

(2016) 04 DEL CK 0113

In the Delhi High Court

Case No : RFA (OS) 54 of 2015 and CM No. 10973 of 2016.

Saranpal Kaur Anand

APPELLANT

Vs

Praduman Singh Chandhok and Others

RESPONDENT

Date of Decision : 25-04-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11 (d)
Limitation Act, 1963 — Article 58

Citation : (2016) 5 ADDelhi 309 : (2016) 157 DRJ 481

Hon'ble Judges : Pradeep Nandrajog; Mukta Gupta, JJ.

Bench : Division Bench

Advocate : A.S. Chandhiok, Sr. Advocate instructed by Dinesh C. Pandey, Tushar Sharma, Yamini Khurana, Advocates, for the Appellant; Anil Sapra, Sr. Advocate instructed by Rakesh Malhotra, Siddharth Handa, Advocates, Rakesh Malhotra, Advocate and Palash Singhai, Advo

Final Decision : Dismissed

Judgement

Mukta Gupta, J. - Saranpal Kaur Anand, an unmarried daughter of late Sardar Harnam Singh Anand and late Smt. Harbans Kaur filed a suit being CS(OS) 873/2012 inter-alia seeking a decree of declaration that suit property bearing No.4-C/7, New Rohtak Road, New Delhi is a joint undivided family property of the plaintiff and defendants No.3 to 9 being the successors of late Sardar Harnam Singh and late Smt. Harbans Kaur; a decree of declaration declaring the purported sale deed dated August 23, 1969 executed by Smt. Harbans Kaur through her alleged attorney in favour of Ms. Tej Kaur as fictitious, sham, incompetent, bad, illegal, null and void and a decree of permanent injunction besides damages and mesne profits. The plaintiff also prayed for additional relief for further claims under Order 2, Rule 2 CPC.

2. After filing of the suit in March 2012 plaintiff filed an application for amendment of the plaint being IA No.17994/2012 under Order 6, Rule 17 CPC read with Section 151 CPC seeking to incorporate the prayer for the relief of

possession on the ground that the same was inadvertently omitted even though foundational pleadings had been set-forth and the requisite Court fee for the relief of possession had been paid. After hearing the parties, the learned Single Judge vide the order dated February 07, 2014 settled the preliminary issue of limitation as under:

"Whether the suit as framed is liable to be rejected under Order 7, Rule 11 (d) of the CPC on the ground of limitation? (OPD)"

3. After the preliminary issue was settled the plaintiff filed another application for amendment of the plaint being IA No.7950/2014 under Order 6, Rule 17 CPC to elaborate and detail the cause of action. Though no notice in this IA No.7950/2014 was issued to defendants No.1 and 2, however arguments were heard in both IAs i.e. IA No.17994/2012 and IA No.7950/2014 besides the preliminary issue settled in CS(OS) No.873/2012 and decided vide the impugned order dated April 06, 2015. The operative portion of the impugned order reads as under:

"39. The suit is apparently time barred. Hence, the plaint is rejected, the issue framed in the matter is accordingly decided against the plaintiff and in favour of defendant Nos.1 and 2, the amendment applications filed by the plaintiff are malafide and are not maintainable as the same itself is time barred on the face of pleadings and documents placed on record. Both applications are accordingly dismissed."

4. Hence the present appeal by the plaintiff before this Court.

5. The contention of learned counsel for the plaintiff is two-fold; firstly that the issue of limitation as settled could not be decided as a preliminary issue because the same was a mixed question of fact and law. At this stage the learned Single Judge could have decided the issue of limitation only by way of demurrer and not relied upon documents handed over by the learned counsel for the defendant No.1 and 2 with written submissions. Secondly, once amendment applications had been filed, the same were required to be decided before deciding the issue of limitation by way of demurrer.

6. Before proceeding to the facts it would be necessary to note the relationship between the parties and the chart showing their relationship is as under:

7. In the plaint Saranpal Kaur Anand impleaded Praduman Singh Chandhok her maternal uncle as defendant No.1, his son Pervinder Singh Chandhok as defendant No.2, her brothers Gurdev Singh Anand, Iqbal Singh Anand, Surjit Singh Anand as defendant No.3, defendant No.4 and defendant No.5 respectively. Smt.Damanpal Kaur Anand, Shri Jaspreet Singh Anand and Shri Gursimar Singh Anand legal heirs of her deceased brother Kultaran Singh Anand as defendant No.6, defendant No.7 and defendant No.8 respectively and Smt.Sarvinder Kaur Chandhok her sister as defendant No.9. Before we deal with the rival contentions, it would be appropriate to note down the averments in the

plaint necessary for the decision of the present appeal. It was stated in the plaint:

i) The subject matter of the suit is the residential property constructed on plot No.4-C/7, New Rohtak Road, New Delhi (in short the suit property) purchased by her late father namely Sardar Harnam Singh Anand as benami in the name of his wife Smt.Harbans Kaur out of the joint family business and funds.

ii) The suit property admeasuring 380.56 sq.yds. comprising of two and a half storey building was purchased from its exclusive owner Shri Ram Rattan on January 20, 1958 which consideration amounts were paid from proceeds/joint family funds.

iii) Smt. Harbans Kaur was a house-wife till her death on August 06, 2005 and had no source of income nor any savings and thus was not in a position to pay the sale consideration.

iv) The leasehold rights of the suit property were purchased vide registered sale deed dated January 20, 1958 and at the time of sale there were 13 tenants inducted by Ram Rattan. Thus the right to receive rent from the tenants was also transferred in favour of Smt.Harbans Kaur.

v) Smt. Harbans Kaur after marriage to Sardar Harnam Singh Anand, concerned with the acute financial crisis faced by her mother Smt.Tej Kaur and her family members comprising of defendant No.1 and 2 permitted her mother and defendant No.2 to reside temporarily, however defendant No.1 and 2 after the demise of Smt.Tej Kaur on July 24, 2007 have refused to vacate the suit property despite repeated reminders.

vi) Smt. Harbans Kaur in order to help and support her brother and his son absorbed the defendant No.1 in the employment of his husband to enable him to earn a living and maintain his family with dignity. Thus both defendants No.1 and 2 were deeply involved in the business activity of Iran established by her late father on the basis of faith, trust and confidence.

vii) To accommodate Smt.Tej Kaur and her family members including defendants No.1 and 2, Sardar Harnam Singh at the request of Harbans Kaur paid substantial amount to the tenants to vacate the property which was where-after permitted to be used by Smt.Tej Kaur and her family members.

viii) The plaintiff recently learnt that Smt.Tej Kaur with defendant No.1 and 2 taking undue advantage of the faith and trust, got signed from late Smt.Harbans Kaur through her attorney the defendant No.3, a document purporting to be a sale deed dated August 23, 1969 seeking to transfer/convey the rights/ title in the suit property in favour of Smt.Tej Kaur for a purported consideration of Rs. 90,000/- falsely alleging that Rs. 20,000/- will be paid as advance and Rs. 30,000/- before the Sub-Registrar and balance Rs. 40,000/- would be paid in 4 equal instalments in four years.

ix) On the basis of fictitious sale deed dated August 23, 1969 claimed to be

registered on August 27, 1969 late Smt. Tej Kaur without any lawful authority executed a fictitious general power of attorney dated April 04, 1982 in favour of defendant No.1, pursuant where to a sale deed dated October 12, 1995 was executed in favour of defendant No.2 for the sale of the suit property against a sham consideration of Rs. 4 lakhs.

x) From the certified copies of the proceedings before this Court in CM(Main) 982/2004 it is revealed that after the demise of Smt.Tej Kaur on July 24, 2007 defendant No.1 filed an application under Order 22, Rule 3 read with Section 151 CPC being CM No.5848/2008 seeking impleadment of LRs of deceased Smt.Tej Kaur wherein he placed on record the copy of the will dated May 03, 2007 executed by Smt.Tej Kaur allegedly claiming herself to be exclusive and sole owner of the suit property having purchased the same vide the purported fictitious Sale Deed dated August 27, 1969 and bequeathing the same in favour of defendant No.2.

xi) Pursuant to directions of this Court in CM(M) 982/2004 publication was issued in daily newspaper "Statesman" English Edition on May 10, 2007 for service to respondents No.1, 3, 9, 10 and 14 therein, respondent No.14 being Smt.Harbans Kaur who had since passed away. When the plaintiff and her family members opposed the prayers, defendant No.1 and 2 compromised the matter and withdrew CM(M) 982/2004 however the Court was pleased to grant liberty to the plaintiff and her family members to raise their claims/ rights as and when required in subsequent pleadings.

xii) Apprehending foul play and serious prejudice plaintiff and her family members got served a legal notice dated October 10, 2008 to defendant No.1 asking him to furnish document/ detail/ particulars on the basis of which he asserted the right/ title in the suit property. A vague and evasive reply dated October 15, 2008 was received wherein no details were furnished. Thus a further legal notice dated October 24, 2010 addressed to both defendants No.1 and 2 was followed to which again an evasive and vague reply was given on November 04, 2010.

xiii) In 2007 defendants No.7 and 8 in their written statement dated December 16, 2010 filed in CS(OS) 1677/2010 titled as Gurdev Singh Anand and Ors. v. Jaspreet Singh Anand and Anr. for the first time vaguely stated about the purported sale deed of the suit property by Smt.Harbans Kaur to her mother Smt.Tej Kaur due to which plaintiff and her other family members were utterly shocked and surprised and became suspicious about the intentions of defendant No.1 and 2.

8. In Paragraph 33 of the plaint in relation to cause of action the plaintiff noted:

"33. That the cause of action first arose on 23.08.1969 claimed to be registered on 27.08.1969 when the purported fictitious sale deed was executed by Late Harbans Kaur in favour of Late Smt.Tej Kaur in respect of the subject property. It again arose on 04.05.1982 when purported General Power of Attorney was

executed by Late Tej Kaur in favour of defendant no.1. It again arose on 12.10.1995 when purported fictitious sale deed was executed by Late Smt.Tej Kaur in favour of defendant no.2 in respect the subject property. The cause of action further arose on 30.05.2007 when purported Will bequeathing the subject property was executed by Smt.Tej Kaur in favour of Defendant No.2 on the basis of the purported fictitious sale deed dated 23.08.1969 claimed to be registered on 27.08.1969. The cause of action again arose in on 10.10.2008, 24.10.2008, when the defendants No.1 and 2 when called upon to admit and acknowledge the rights/interest/title of the Plaintiff and her family members and handover the possession of the suit property denied vide reply dated 15.10.2008 and 04.11.2008. The cause of action further arose in 09.09.2011, 22.09.2011, 30.09.2011, 11.10.2011, 22.10.2011 when the defendants No.1 and 2 were called upon to admit and acknowledge the rights/interest/title of the Plaintiff and her family members over the suit property and hand over the possession thereof and pay mesne profits for unauthorized and illegal occupation failed/defaulted and neglected to do so and the cause of action is still continuing till date as the defendants No.1 and 2 are continuing with illegal/unlawful and unauthorised occupation of the suit property and have failed to pay the mesne profits without any just or lawful excuse. The cause of action still subsists and is still continuing in as much as the defendants are still contemplating to create 3rd party rights, interest and claims in respect of the suit property including making attempts to sell, part with possession of the same which is lawfully and validly jointly owned and possessed by the plaintiff and her family members as afore-said. Cause of action is continuous and all the alleged documents executed to evidence transfer of property are fictitious, void ab initio, illegal being without consideration and nullity in the eyes of law affording no equities or protection whatsoever."

9. The learned Single Judge in Para-14 of the impugned judgment noted the relevant dates and events which happened between the parties as per the pleadings as under:

- i) On 20th January, 1958, the suit property bearing No.4C/7, New Rohtak Road, New Delhi from Shri Ram Rattan, S/o. Pt. Ram Kishan vide registered Sale Deed dated 20th January, 1958 registered as No.315 Additional Book No.1, Volume No.406 on page 43 to 50 on 17th February, 1958 with the officer of sub-registrar in the name of Smt. Harbans Kaur. The property was under tenancy of tenants.
- ii) On 23rd August, 1969, Smt. Harbans Kaur through her attorney sold the property bearing No.4C/7 New Rohtak Road by way of registered sale deed in favour of Tej Kaur.
- iii) On 23rd November, 1970 and 10th December, 1970 a demand notice addressed to Mrs.Tej Kaur by MCD and representation submitted by Mrs.Tej Kaur with MCD.
- iv) On 21st September, 1971 the notice was issued to the tenant of the subject property on behalf of Ms.Harbans Kaur wherein the factum of the sale of the

subject property in the name of Tej Kaur was brought to the notice of the tenant and responded by tenant on 5th October, 1971.

v) On 25th April, 1973 plaintiff Mrs.Saranpal Kaur attained the age of 18 years.

vi) In the year 1974 Sardar Harnam Singh Anand father of plaintiff expired.

vii) On 17th January, 1976 Succession certificate was obtained by Mrs.Harbans Kaur qua the estate left by Mr.Harnam Singh Anand bearing No.722/74.

viii) On 19th April, 1980 a letter was written to DDA for mutation of the subject property in the name of Mrs.Tej Kaur on behalf of Ms.Harbans Kaur.

ix) On 3rd May, 1982 Eviction petition filed by Mrs. Tej Kaur against the tenant wherein Mrs.Harbans Kaur was impleaded as respondent No.3 (performa party) as a erstwhile owner.

x) On 25th May, 1982 Notice qua the eviction proceedings titled as Tej Kaur v. K.S. Gupta was served to Mrs. Harbans Kaur as a performa respondent being predecessor interest and this notice was served on 59/7, New Rohtak Road, Karol Bagh, New Delhi where she was residing.

xi) On 23rd August, 1982 Mutation of the subject property was executed with the office of Tehsildar with the name of Mrs.Tej Kaur.

xii) On 12th October, 1995 Mrs.Tej Kaur sold suit property by executing a registered sale deed in favour of Mr. Pervinder Singh Chandhok, defendant No.2.

xiii) On 6th August, 2005 Mrs.Harbans Kaur expired.

xiv) On 28th October, 2006 Defendant No.3 being one of the LR of Mrs. Harbans Kaur refused to accepted the summons to be served by Bailiff of High Court in CM Main No.982/2004 titled as K.S. Gupta (Chander Kala Ors. v. Mrs. Tej Kaur and finally on 10th May, 2007 they all were served by way of publication. Plaintiff as well as her family members moved an application in the said eviction case pending before this Court wherein the factum of selling the property and the title in favour of defendant No.2 was available on the record of the said case.

xv) On 24th July, 2007 Mrs.Tej Kaur expired.

xvi) On 16th March, 2008 An application under Order 1, Rule 10 of CPC was moved by the plaintiff and other defendants before the Court of ARC whereby acknowledging the sale of the subject property in favour of Mrs.Tej Kaur and thereafter in favour of defendant No.2. The said application was duly signed by the plaintiff as well as defendant Nos.3 to 5 and 9.

xvii) In the year 2008 Suit filed by Mr.Jaspreet Singh Anand (defendant No.7) before this Court bearing CS(OS) No.977/2008 for the relief of partition qua the property of Mrs.Harbans Kaur and Mr.Harnam Singh in respect of other immovable properties. The subject property was found not mentioned in the said suit.

xviii) In September, 2008 The counsel of the one of the defendants No.4 and 5 namely Mr. Iqbal Singh Anand and Mr. Surjit Singh Anand brothers of the plaintiff inspected the judicial file of the C.M. Main No.982 of 2004 emanating from eviction petition filed by Mrs. Tej Kaur against one of the tenant of the subject property wherein sale deed was part of that judicial file.

xix) On 10th/24th October, 2008 legal notice issued on behalf of plaintiff through her counsel wherein plaintiff has claimed the right qua the subject property on the basis of one of legal heir of Mrs. Harbans Kaur who predeceased her mother Mrs. Tej Kaur.

xx) Similarly, on 3rd August, 2010 Mr. Gurdev Singh Anand (Defendant No.3) filed suit against the plaintiff and other defendants for the relief of partition with respect to the assets of Mrs. Harbans Kaur and Mr. Harnam Singh and again the subject property was found not mentioned in the said suit.

xxi) On 27th March, 2012 Plaintiff filed the present suit.

10. Learned counsel for the defendants No.1 and 2 contends that the suit is barred by Section 3 of the Benami Transaction Act. The suit is based on false pleadings for the reason, the plea of benami taken for the first time in the suit is contrary to the legal notices dated October 10, 2008 and October 24, 2008 sent by the plaintiff and her family members. As per Article 58 of the Limitation Act, the period of limitation for filing a suit for declaration is three years from the date when the right to sue first accrues. There is no pleading in the plaint that the fraud came to the knowledge of the plaintiff later.

11. Learned counsel for defendants No.1 and 2 further contends that in the two legal notices sent by the plaintiff and the other siblings dated October 10, 2008 and October 24, 2008 there is a clear admission that Tej Kaur was the owner of the suit property and the plaintiff and her siblings sought only partition of the estate of Smt.Tej Kaur and not Harbans Kaur or Harnam Singh. There is no mention of the suit property in the two notices. Further having admitted Smt.Tej Kaur to be the owner of the property in the notices, the plea that Smt.Harbans Kaur was a benami owner of the property belonging to Harnam Singh cannot be sustained.

12. Learned counsel for defendant Nos.1 and 2 relies upon the decision of the Division Bench of this Court reported as 211 (2014) DLT 149 (DB) Keshav Chander Thakur and Anr. v. Krishan Chander and Ors. to contend that de-hors Order 7, Rule 11 CPC the Court can suo moto exercise power to pass suo motu judgment under Order 12, Rule 6 CPC on the basis of admission of a party and nip in bud a frivolous suit. Learned counsel also relies upon the decision reported as 1977 (4) SCC 467 T. Arivandandam v. T.V. Satyapal and Anr.. The admissions sought to be relied upon by the learned counsel for defendant Nos.1 and 2 are in the notices and the application for impleadment under Order I Rule 10 CPC filed by the plaintiff in the eviction suit.

13. Learned counsel for the plaintiff on the other hand points out to the legal notice dated October 24, 2008 wherein specific reference is made in Para-13 (v) regarding partition of the suit property stating therein that Smt.Harbans Kaur had acquired her undivided share on the death of Smt.Tej Kaur. Referring to the reply to the two legal notices dated October 15, 2008 and November 04, 2008 sent by the defendants No.1 and 2 it is stated that there is no mention in the replies that Smt.Tej Kaur had sold the suit property to defendant No.2 or that she executed a Will. In the plaint, the plaintiff has asserted that the factum of suit property being sold to defendant No.2 vide the sale deed dated October 12, 1995 and a subsequent Will dated May 03, 2007 came to her knowledge on December 16, 2010 when defendant Nos.1 and 2 filed their written statements in CS (OS) No.1677/2010. Since this fact was not in her knowledge, the same could not have been pleaded in CS (OS) No.1677/2010. Thus a separate suit being the present one was instituted. The present suit was within the period of limitation of three years from the date of knowledge.

14. The grievance of learned counsel for the plaintiff is that the learned Single Judge could have decided the issue of limitation by way of demurrer and looked into the plaint only at this stage, whereas the learned Single Judge looked into the documents along with the written submissions filed by the defendants No.1 and 2 which was wholly impermissible.

15. Indubitably while deciding the issue of limitation as a preliminary issue the averments in the plaint alone can be looked into by way of demurer. In the decision reported as 2006 (5) SCC 638 Ramesh B. Desai and Ors. v. Bipin Vadilal Mehta and Ors. the Supreme Court held:

"15. The principle underlying clause (d) of Order 7, Rule 11 is no different. We will refer here to a recent decision of this Court rendered in Popat and Kotecha Property v. State Bank of India Staff Assn. [(2005) 7 SCC 510] where it was held as under in para 10 of the report: (SCC p. 515)

"10. Clause (d) of Order 7, Rule 7 speaks of suit, as appears from the statement in the plaint to be barred by any law. Disputed questions cannot be decided at the time of considering an application filed under Order 7, Rule 11 CPC. Clause (d) of Rule 11 Order 7 applies in those cases only where the statement made by the plaintiff in the plaint, without any doubt or dispute shows that the suit is barred by any law in force."

16. It was emphasised in para 25 of the report that the statement in the plaint without addition or subtraction must show that it is barred by any law to attract application of Order 7, Rule 11 CPC. The principle is, therefore, well settled that in order to examine whether the plaint is barred by any law, as contemplated by clause (d) of Order 7, Rule 11 CPC, the averments made in the plaint alone have to be seen and they have to be assumed to be correct. It is not permissible to look into the pleas raised in the written statement or to any piece of evidence. Applying the said principle, the plea raised by the contesting respondents that

the company petition was barred by limitation has to be examined by looking into the averments made in the company petition alone and any affidavit filed in reply to the company petition or the contents of the affidavit filed in support of Company Application No. 113 of 1995 filed by the respondents seeking dismissal of the company petition cannot at all be looked into."

16. In the legal notice dated October 10, 2008 sent by the counsel of the plaintiff, it was stated and we note the relevant paragraphs 3 to 8 thereof:

"3. In fact Smt. Harbans Kaur after her marriage took all steps to establish her mother (late Ms. Tej Kaur and her son). In fact, property No.4-C/7 New Rohtak Road, New Delhi 110005 was given by Smt. Harbans Kaur unto her mother Ms. Tej Kaur and she took all steps to establish her brother namely Praduman Singh Chandhok. Smt. Harbans Kaur settled her brother by entrusting him with jobs of managing various business(s) and estate of her late husband Shri Harnam Singh in Iran and elsewhere.

4. Since Ms. Tej Kaur died intestate, Ms. Harbans Kaur legally succeeds to her share in estate of Ms. Tej Kaur along with other remaining legal heirs Praduman Singh Chandhok and others. Her share to the estate is joint and undivided and is to be succeeded upon my clients jointly.

5. Noticee approached my clients for rendition of accounts, pay entire dues/money of my client and to deliver various papers regarding various assets, businesses and estate belonging to my clients and their parents at Iran and elsewhere. In furtherance of finalisation of all pending issues and agreeing to deliver amounts payable besides various documents as referred to in settlement, notice requested my clients to sign some papers for recording settlements, which were signed in good faith.

6. Believing said version of notice, papers were signed. However, copies of same or text thereof is not supplied till date. No rendition of accounts of assets and estate of my clients and their parents at Iran and elsewhere has been done as promised.

7. It has now been learnt from other legal representatives of Ms. Tej Kaur that said papers have been created by noticee representing that my clients cease to have any rights, title interest in the estate of Ms. Tej Kaur and/or do not assert or claim any share which comes to them through their deceased mother Ms. Harbans kaur.

8. My clients maintain that they did not sign any such papers with intent to release or relinquish their rights qua succession to the estate of deceased Ms. Tej Kaur qua undivided share of Ms. Harbans Kaur therein. As explained above papers were signed by my clients in good faith for settlement of assets and estate at Iran and elsewhere. Any such paper or writing created is forged and fabricated writing. My clients disown all such writings created whether by notice or any other person(s) claiming by or under or through him."

9. You are notified that:

i) Ms. Harbans Kaur has undivided share to the estate of Ms. Tej Kaur in equal share with remaining other legal representatives of deceased Ms. Tej Kaur.

ii) None of my clients have executed any Relinquishment Deed or Release Deed or got any such document registered whereby releasing their claims to undivided share of Ms. Harbans Kaur (in favour of the noticee or any other legal representative of deceased Ms. Tej Kaur).

iii) All my clients being sons, daughters and grandsons of deceased Ms. Harbans Kaur are jointly entitled and have their claims in joint undivided share to the estate of Ms. Tej Kaur claiming by or under or through Ms. Harbans Kaur and further notify that they are no longer interested in having unity of title and possession in said estate of Ms. Tej Kaur.

iv) Therefore, my clients jointly notify you to take appropriate steps for causing partition of entire estate of deceased Ms. Tej Kaur and my clients be given their due share out of estate and/or said share be partitioned distinctly and/or such share be valued out to enable my clients to sell off their share and/or to buy out rest of the legal heirs of their undivided share in estate.

v) Also be notified that papers which were presented by notice herein, unto my clients and on which their signatures have been obtained be not used anywhere before any authority or department or in any Court of law. And/or alternatively if any such papers are submitted, the notice is required to:

a) Provide copy(ies) of such papers submitted;

b) Provide details of authorities/departments/ Court wherein same are submitted along with case title and the date of hearing on which such papers were filed and/or are scheduled to be listed for consideration and/or have been accepted and considered by the Court and/or the orders passed thereupon to enable my clients to take appropriate steps according to law for purposes of dissolution thereof and/or cancellation thereof;

c) said compliance is required to be made forthwith.

vi) Disclose details of total estate of Ms. Tej kaur so as to enable my clients to take appropriate steps to seek partition thereof for classifying/qualifying/defining/ determining the extent of undivided share of my clients and tentative value thereof.

vii) Also remain notified that you have no right or authority or competence or any jurisdiction to transfer any part or portion of estate of deceased Ms. Tej kaur unto any person under any transaction whatsoever, without previously offering the same unto my client at the first instance. Should you make any attempt to deal with any part/portion of estate with any third person, same shall be absolutely illegal and shall have no binding effect on my clients.

10. My clients have instructed me to notify you, Which I hereby doth with this notice and call upon you to:

i) make compliance to the requirements contained in paragraph 8 (i) to (vii);

ii) Compliance thereto be made within 15 days from receipt of this notice;

iii) failure to make compliance shall compel my clients to take appropriate legal steps as permissible in law to seek partition of estate as well as for declaration for discussion and cancellation of the papers on which signatures of my clients have been obtained by the notice herein;

iv) in such an eventuality the entire costs incurred in this connection shall have to be borne by you exclusively, which you please note. Copy kept.

[Emphasis supplied]

17. In the second legal notice dated October 24, 2008 the plaintiff sought partition of the suit property being the estate of Mrs. Tej Kaur and we note Para 13(v) in this regard:

"13. My clients have instructed me to notify you, which I hereby doth with this notice and call upon you to:

v) partition property No.4C/7, New Rohtak Road New Delhi where deceased Harbans Kaur has acquired her undivided share in the eve of death of Mrs. Tej Kaur."

[Emphasis supplied]

18. From the two legal notices dated October 10 and 24, 2008, copies whereof have been filed by the plaintiff along with the plaint, it is evident that plaintiff along with the other siblings sought inheritance to the estate of Smt.Tej Kaur by the partition of the suit property, inheriting the same through the deceased Harbans Kaur, thereby admitting that the suit property vested in late Smt.Tej Kaur. Thus they had knowledge of the fact that Tej Kaur was the owner of the suit property.

19. In Para 14 of the plaint it was stated:

"14. That it is pertinent to mention that the Plaintiff has further come to know from the certified copies of proceedings before this Hon"ble Court in C.M.(Main) No.982 of 2004 that during the pendency of the said proceedings Smt. Tej Kaur demised on 24.07.2007 and the defendant No.1 filed an application under Order 22, Rule 3 read with Section 151 of CPC registered as C.M. No.5848 of 2008 seeking impleadment of LRs of deceased Smt. Tej Kaur wherein he placed on record the copy of the Will dated 03.05.2007 executed by Smt. Tej Kaur allegedly claiming herself to be the exclusive and sole owner of the said property having purchased vide the purported fictitious Sale Deed dated 23.08.1969 claimed to have been registered on 27.08.1969 and bequeathing the same in favour of the defendant No.2 which is totally contradictory to the purported sham/illegal and

null and void transaction made out herein above."

20. In the written statement to the plaint, defendant Nos.1 and 2 stated about an application under Order I Rule 10 read with Section 151 CPC filed before the Court of the learned ARC acknowledging the execution of the Will dated May 03, 2007 and we note relevant portion of Para 14 of the written statement as under:

"14. The contents of the para 14 of the plaint are wrong and are denied. It is denied that the plaintiff has further come to know from the certified copies of proceeding before this Hon"ble Court in C.M.(Main) No.982/2004 that during the pendency of the said proceedings Smt.Tej Kaur demised on 24.07.2007 and the defendant No.1 filed an application under Order 22, Rule 3 read with Section 151 of CPC registered as C.M. No.5848 of 2008 seeking impleadment of LRs of deceased Smt.Tej Kaur wherein he placed on record the copy of the Will date 03.05.2007 executed by Smt. Tej Kaur allegedly claiming herself to be the exclusive and sole owner of the said property having purchased vide the purported fictitious sale deed dated 23.08.1969 claimed to have been registered on 27.08.1969 and bequeathing the same in favour of the defendant No.2 which is totally contradictory to the purported sham/ illegal and null and void transaction made out herein above. It is most respectfully submitted that Mrs. Tej Kaur has sold this property to defendant No.2 through registered sale deed against valid sale consideration and as submitted above all the title deeds as well as the possession was handed over to the defendant No.2 by Mrs. Tej Kaur. That it is further submitted that although the sale deed 12.10.1995 was absolutely legal and valid but Smt. Tej Kaur was wrongly advised that because defendant No.2 was a Non Resident Indian, the sale would not be valid and execution of will is also necessary. Based on the said proposition, Smt. Tej Kaur also executed a will dated 03.05.2007 as she intended to transfer the property to defendant No.2. On the same premise defendant No.2 used the will (instead of sale deed) for claiming title to the said property. However, it was much later that defendant No.1 and 2 came to know about the correct position in law that there is no bar to execution of any sale deed in favour of an NRI. Without admitting anything for the sake of the argument it is submitted that execution of will by the vendor in addition to the registered sale deed will not render any defect in said deed and there is no bar to this. Even the execution of the said will was very well in the knowledge of the plaintiff as well as other defendants as they have executed no objection certificate in support of that will. Beside this as per the paragraph 6 of the application moved by plaintiff as well as other defendants under Order I Rule 10 of r/w Section 151 of CPC vide diary No.32501 of 2008 in C.M. Main No.982/2004, plaintiff as well as other defendants have acknowledged about the execution of the Will dated 03.05.2007 in favour of the defendant No.2. However the said application was not listed for hearing in this matter and same remained in the Registry and it is beyond the knowledge of the answering defendant whether the said application is still lying with the registry or not. In addition to this plaintiff as well as other defendants moved application under Order 1, Rule 10 r/w Section 151 of CPC before the Ld. Court of Sh. Amit Kumar; ARC; Delhi

where they have also acknowledged the factum of execution of the Will dated 03.05.2007 and this application is part of the judicial file of that proceeding. It is worthwhile herein to mention that all these facts clearly demonstrate that this suit is malicious and has been filed with a intent to harass the answering defendant and also defendant No.2. It is further submitted that registered sale deed dated 12.10.1995 itself conferred absolute ownership in favour of the defendant No.2 which cannot be challenged in any manner by third party who has no right qua the suit property."

21. In the replication to the written statement of defendants No.1 and 2 the plaintiff did not specifically deny the knowledge of the sale deed or the Will and evasively denied the same. Para 14 of the replication filed by the plaintiff in CS(OS) No.873/2012 states:

"14. Contents of para 14 of the written statement so far as they are inconsistent or contrary to the pleadings mentioned in the plaint are inconsistent, contradictory, wrong, incorrect and denied. Contents of the corresponding para of the plaint are reiterated and reaffirmed as correct. The whole allegations/ averments made to the contrary is concocted, false, frivolous, contradictory to the positive knowledge of the defendant No.1 and hence denied. The contents of the corresponding para of the preliminary submissions may kindly be read in reply to the averments made by the defendant No.1 in the instant para reference also. It is submitted that the explanation sought to be put forth by the defendant No.1 to justify the contradictory/ untenable and impermissible plea of execution of will dated 03.05.2007 by Smt.Tej Kaur despite also claiming to have executed the purported sale deed in the year 2005 is far from being acceptable and is in fact an evil and malafide attempt on the part of the defendant No.1 to mislead this Hon"ble Court. It is submitted that the will in question was deliberately and consciously placed before this Hon"ble Court in CM (Main) No.982 of 2004 by the defendant No.1 and 2 based whereupon the said application was allowed and now to turn around and claim that the will dated 03.05.2007 will not affect the purported sham sale deed of 1995 is absolutely farce, untenable, impermissible in law. With regards to the filing of application in proceedings as alleged nothing has been placed on record nor any details thereof having been provided the plaintiff denies any such averments for want of knowledge and the defendant No.1 be put to strict proof in support of such averments."

22. Thus, there is no denial of the fact that the plaintiff had the knowledge of the Will dated May 03, 2007 executed by late Smt. Tej Kaur in favour of defendant No.2 in the year 2008 when application under Order I Rule 10 r/w Section 151 CPC was filed in CM (Main) No.982/2004 and at the time when application was filed before the learned ARC. Non-denial of the knowledge of the Will in the replication would be treated as an admission of the plaintiff qua the knowledge of the Will dated May 03, 2007 executed by late Mrs. Tej Kaur, in the year 2008. In the decision reported as AIR 1964 SC 538 Badat and Co., Bombay v. East India Trading Co. the Supreme Court noting the various rules under Order

7 and Order 8 CPC held -

"11. Order 7 of the Code of Civil Procedure prescribes, among others, that the plaintiff shall give in the plaint the facts constituting the cause of action and when it arose, and the facts showing that the court has jurisdiction. The object is to enable the defendant to ascertain from the plaint the necessary facts so that he may admit or deny them. Order 8 provides for the filling of a written statement, the particulars to be contained therein and the manner of doing so; Rules 3, 4 and 5 thereof are relevant to the present enquiry and they reads:

Order 8, Rule 3 . It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages.

R.4. Where a defendant denies an allegation of fact in the plaint, he must not do so evasively, but answer the point of substance. Thus if it is alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances.

R.5. Every allegation of fact in the plaint, if not denied specifically, or by necessary implication or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability.

Provided that the court may in its discretion require any fact so admitted to be proved otherwise than by such admission.

These three rules form an integrated code dealing with the manner in which allegations of fact in the plaint should be traversed and the legal consequences flowing from its non-compliance. The written statement must deal specifically with each allegation of fact in the plaint and when a defendant denies any such fact, he must not do so evasively, but answer the point of substance. If his denial of a fact is not specific but evasive, the said fact shall be taken to be admitted. In such an event, the admission itself being proof, no other proof is necessary."

23. Reiterating the same principle that an evasive denial would be deemed to be an admission, the Supreme in the decision reported as (2008) 7 SCC 85 *Gautam Sarup v. Leela Jetly and Ors.* held that an admission made by a party to the lis is admissible against him *proprio vigore*. The report noted:

"14. An admission made in a pleading is not to be treated in the same manner as an admission in a document. An admission made by a party to the lis is admissible against him *proprio vigore*.

16. A thing admitted in view of Section 58 of the Evidence Act need not be

proved. Order 8, Rule 5 of the Code of Civil Procedure provides that even a vague or evasive denial may be treated to be an admission in which event the court may pass a decree in favour of the plaintiff. Relying on or on the basis thereof a suit, having regard to the provisions of Order 12, Rule 6 of the Code of Civil Procedure may also be decreed on admission. It is one thing to say that without resiling from an admission, it would be permissible to explain under what circumstances the same had been made or it was made under a mistaken belief or to clarify one's stand inter alia in regard to the extent or effect of such admission, but it is another thing to say that a person can be permitted to totally resile therefrom."

24. Thus, having admitted Ms. Tej Kaur as the owner of the property and claiming to succeed to the suit property as an estate of Ms. Tej Kaur through her pre-deceased mother Harbans Kaur vide the legal notices dated October 10 and 24, 2008 and further seeking partition of the suit property having acquired the same on the death of Ms. Tej Kaur through Smt. Harbans Kaur, the admissions of the plaintiff negate her to claim a decree of declaration claiming the suit property to be a joint undivided family property being the successor of late Sardar Harnam Singh and late Smt. Harbans Kaur and Smt. Harbans Kaur being a benami owner of the suit property and a further declaration that the sale deed dated August 23, 1969 in favour of Ms. Tej Kaur was fictitious, sham and illegal document.

25. Further in view of the evasive denial in the replication to the specific pleadings in the written statement about the knowledge of plaintiff in respect of the Will dated May 03, 2007 which fact was, according to defendants No.1 and 2, acknowledged in the application under Order I Rule 10 CPC, the plaintiff would be deemed to have admitted the fact of knowledge of the Will dated May 03, 2007 when it filed an application under Order I Rule 10 CPC vide diary No.32501 in the year 2008 in CM(M) No.982/2004.

26. As per Article 58 of the Limitation Act, 1963, the period of limitation for filing a suit for declaration would three years from the date when the cause of action to sue first accrues. The plaintiff has sought for decree of declaration which ought to have been filed within three years from the date of right to sue first accrues. The right to first sue accrued to the plaintiff on receipt of knowledge of the Will in the year 2008 as per Article 58 of the Limitation Act.

27. The Supreme Court in the decision reported as (2011) 9 SCC 126 Khatri Hotels Private Limited and Anr. v. Union of India and Anr. noted the distinction between Article 58 of Limitation Act, 1963 and Article 120 of Limitation Act, 1908.

"30. While enacting Article 58 of the 1963 Act, the legislature has designedly made a departure from the language of Article 120 of the 1908 Act. The word "first" has been used between the words "sue" and "accrued". This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. To put it

differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued."

28. Even while dealing with an application under Order 7, Rule 11 CPC, the Court can exercise power under Order 12, Rule 6 CPC to pass a judgment on admissions. A Division Bench of this Court in Keshav Chander Thakur(supra) held that though in an application under Order 7, Rule 11 CPC only plaint and the documents filed along with the plaint can be looked into however given the nature of pleadings and admitted documents, the Court was well within its jurisdiction to exercise power under Order 12, Rule 6 CPC and pass a judgment suo motu. It was held:

"38. We concur with the view of the learned Single Judge. However, we may like to note that the learned Single Judge has exercised powers under Order 7, Rule 11 CPC while rejecting the plaint. The scope of exercise of powers under Order 7, Rule 11 CPC is limited by the contours of the provision. While exercising those powers what has to be seen is only the averments in the plaint and the documents filed along with the plaint. The defence as taken in the written statement is not to be gone into for the said purpose. To that extent, the judgment of the learned Single Judge may suffer from an infirmity. However, in our view given the nature of pleadings and admitted documents on record and the extensive arguments advanced by the parties on the issues discussed herein, this was a fit case for the Court to exercise powers under Order 12, Rule 6 CPC where the Court has powers to suo moto pass a judgment. There is no requirement in Order 12, Rule 6 CPC for filing of a formal application. The Court can on its own motion without any application by a party proceed to pass a decree on admissions as stated in Order 12, Rule 6 CPC. Order 12, Rule 6 (i) CPC reads as follows:-

"6. Judgment on admissions.- (1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions."

In our view based on the pleadings and documents placed on record by the parties there are clear admissions of fact which warrant passing of the order of dismissal of the plaint."

29. In view of the admission of the plaintiff with regard to ownership of Tej Kaur by seeking succession to her estate and the knowledge of the will dated May 03, 2007 executed by late Smt. Tej Kaur in favour of defendant No.2 in the year 2008, the suit having been instituted in March 2012 was clearly beyond the period of limitation of three years and liable to be rejected under Order 7, Rule 11 CPC. The plaintiff cannot create an illusion of the cause of action by now

claiming that the suit property was owned by late Shri Harnam Singh and Smt. Harbans Kaur was a benami and gave the property to her mother Smt. Tej Kaur.

30. In the decision reported as (1977) 4 SCC 467 T. Arivandandam v. T.V. Satyapal and Anr. it was held-

"5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. The learned Munsif must remember that if on a meaningful - not formal - reading of the complaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10, CPC. An activist Judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage."

31. As regards the plea that the two applications under Order 6, Rule 17 CPC seeking the amendment to incorporate the prayer for the relief of possession and detail the cause of action are concerned, we note that the suit having been filed beyond the period of limitation the said amendments were unnecessary and thus IA Nos.17994/2012 and 7590/2014 were rightly dismissed by the learned Single Judge.

32. Appeal and application are dismissed.

33. Parties to bear their own cost.