

(2008) 07 DEL CK 0190

In the Delhi High Court

Case No : CS (OS) No. 1236 of 2008 and I.A. No's. 7579 of 2008 and 580 of 2008

Sh. Jagdish Chander

APPELLANT

Vs

Sh. Ramesh Chand Aggarwal and Others

RESPONDENT

Date of Decision : 24-07-2008

Acts Referred:

Delhi Land Reforms Act, 1954 — Section 11, 185, 66
Limitation Act, 1963 — Article 109, 11, 14, 14(1), 14D

Citation : (2008) 07 DEL CK 0190

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Sashi Ranjan and R.K. Gupta, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Hima Kohli, J.

I.A. No. 8525/2008 (under Section 14 & 5 of the Limitation Act)

1. The plaintiff has filed the accompanying suit for declaration, partition, permanent injunction etc. The present application is filed by the plaintiff praying inter alia for condonation of delay of 818 days in instituting the present suit. In the course of the arguments, counsel for the plaintiff states that, in fact, condonation of delay which ought to have been sought by the plaintiff is for more than 818 days and according to him, there is delay of about ten years in instituting the present suit.

2. A brief reference to the relevant facts of the case is necessary for deciding in the present application. It is the case of the plaintiff that one Sh. Bhagirath, great grandfather of the plaintiff was the owner of the agricultural land situated in the revenue estate of village Rajokri, New Delhi subject matter of the present suit. Sh. Bhagirath had three sons namely Jhanjhu, Kallu and Ghisha Ram. Sh.

Jhanjhu inherited 1/3rd undivided share in the suit property upon the demise of Sh. Bhagirath. Sh. Jhanjhu had two sons, namely, Sh. Tek Chand and Sh. Ram Nath. Upon the demise of Sh. Jhanjhu, his 1/3rd undivided share devolved upon his two sons to the extent of 1/6th share each. Sh. Tek Chand had three sons including the plaintiff herein. The plaintiff claims 1/18th share in the suit premises on the ground that the agricultural land in question was a joint Hindu Family land of which the plaintiff and his two brothers were coparceners. He claims that in the year 1993, his father, Sh. Tek Chand executed three General Power of Attorneys in favour of one Mr. Prakash Sharma who in turn sold the entire agricultural land to defendants No.1 to 16, by way of 30 different sale deeds, all dated 12.1.1994.

3. Counsel for the plaintiff submits that on 04.2.1998, the plaintiff filed a petition u/s 11 of the Delhi Land Reforms Act before the learned SDM for correction in the revenue records and for a declaration that the plaintiff had bhumidhari rights in the land in question to the extent of 1/18th share. Vide order dated 12.1.2000, the learned SDM directed the defendants to maintain status quo till the disposal of the case filed by the plaintiff. The defendants therein were later on directed to be proceeded ex-parte. It is stated that during the pendency of the aforesaid petition, the plaintiff entered into an agreement with the defendants therein, arrayed as defendants No. 1 to 16 herein, duly recorded in a MOU dated 24.6.2004 whereunder for a sum of Rs. 1,00,000/- towards the cost of litigation, the plaintiff agreed to enter into a compromise with the said defendants and withdraw the proceedings pending before the learned SDM. The said proceedings were subsequently withdrawn by the plaintiff, as duly recorded by learned SDM in the order dated 25.6.2004. A perusal of the order passed by the learned SDM shows that the plaintiff appeared before the learned SDM for withdrawal of the case and made a statement which was duly recorded and his right of bhumidhari case was directed to be disposed of by the learned SDM as withdrawn. Counsel for the plaintiff submits that there was an oral understanding between the parties that apart from a sum of Rs. 1,00,000/- received by the plaintiff towards litigation charges, the parties would execute a sale deed for two and a half bighas of land in favour of the plaintiff. He is, however, unable to show from the records any document to substantiate the averment with regard to the purported oral understanding.

4. Counsel for the plaintiff submits that as the plaintiff kept contacting the defendants for transfer of the aforesaid purported two and a half bighas of land by executing a sale deed in his favour and defendants did not respond to the plaintiff as agreed, he filed an application dated 27.7.2004 before the learned SDM for recalling of the order dated 25.6.2006. The aforesaid application filed by the plaintiff for revival of the petition u/s 11 of the Delhi Land Reforms Act was dismissed by the learned SDM vide order dated 17.5.2006.

5. Aggrieved by the order of learned SDM, the plaintiff filed a writ petition before this Court being WP(C)No. 9406/2006 which was dismissed as withdrawn vide

order dated 29.5.2006. Thereafter, the plaintiff filed a revision petition before this Court being Civil Revision No. 197/2006 which was also dismissed as withdrawn by order dated 24.7.2006. On 31.7.2006, the plaintiff filed an appeal before the Deputy Commissioner, South West Zone, New Delhi against the order of the learned SDM dated 17.5.2006. The said appeal was dismissed on 17.8.2007. Aggrieved by the aforesaid order of dismissal dated 17.8.2007, the plaintiff filed a second appeal before the Financial Commissioner, Delhi, u/s 66 of the Delhi Land Reforms Act. The said appeal is stated to be pending. However, as the interim order of status quo passed in favour of the plaintiff was vacated, aggrieved by the same, the plaintiff filed a petition in this Court registered as CM (M) 1511/2007 which is stated to be pending disposal. Counsel for the plaintiff submits that the aforesaid petition is now listed for hearing on 07.1.2009.

6. In the course of arguments, counsel for the plaintiff states that the plaintiff is entitled to invoke the provisions of Section 14(1) of the Limitation Act (hereinafter referred to as the Act) which reads as under:

14. Exclusion of time of proceeding bona fide in court without jurisdiction:

(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

7. Counsel for the plaintiff submits that in view of the fact that the plaintiff has been prosecuting with due diligence and good faith, his petition before the Revenue Authorities, he is entitled to seek exclusion of time in instituting the present suit before this Court by invoking the provisions of Section 14(1) of the Act.

8. The aforesaid plea raised by the counsel for the plaintiff has to be examined in the light of the documents placed on the record read with the factual matrix as culled out from the plaint. The reliefs sought by the plaintiff before this Court are for declaration to the effect that the plaintiff be declared as the lawful owner of 1/18th undivided share in the suit property and that the sale deeds in respect of the suit property executed by his father and uncle as mentioned in para 4 of the plaint, be declared null and void to the extent of his 1/18th undivided share. It is pertinent to note that in the present proceedings, the plaintiff has chosen to implead only the sixteen purchasers of the agricultural land and the SDM of the

area. He has neither impleaded his father, uncle or his brothers as the defendants.

9. As against the aforesaid relief sought by the plaintiff in the present suit, the relief sought by the plaintiff in the petition preferred by him u/s 11 of the Delhi Land Reforms Act was to the effect that he be declared as a bhumidhar of 1/18th share in respect of the agricultural lands in question and for restraining the defendants therein from dispossessing the plaintiff from the portion of the land to the extent of 1/18th undivided share. Thus, it is apparent that the relief sought by the plaintiff in the present suit is entirely different from the relief sought by him before the learned SDM. Hence, the claim of the plaintiff that he is entitled to exclusion of time for proceeding bona fide, with due diligence and in good faith in a Court which suffers from the defect of jurisdiction and that this Court ought to entertain the relief sought by the plaintiff in the present suit, is on the face of it, misconceived and untenable.

10. Section 14 of the Act provides for exclusion of time spent in proceeding bona fide before a court which lacked jurisdiction. The object of the said provision is to provide protection against the bar of limitation to a litigant who was in all honesty, prosecuting a lis before a court which did not have the jurisdiction to grant the relief as prayed for. The underlying principle of the said section is that limitation shall remain in limbo while the litigant was bona fide prosecuting his rights in a court due to wrong advice. Thus, the aforesaid provision is only a reiteration of a general principle based on justice, equity and good conscience and the same is applicable without strict regard to the period of limitation prescribed. No doubt, the words "due diligence and/or good faith" are the sheet-anchor of Section 14 of the Act, one cannot lose sight of the fact that for enabling a litigant to invoke the said provision, it is also necessary to arrive at a conclusion that the litigant was prosecuting his lis before a court which lacked jurisdiction. (Ref. *Nrityamoni Dassi v. Lakhan Chandra Sen* AIR 1916 PC 96 and *United India Insurance Co. Ltd. Vs. J.A. Infra Structure Pvt. Ltd.*, .

11. It cannot be held in the present case that the learned SDM could not have entertained the petition filed by the plaintiff u/s 11 of the Delhi Land Reforms Act. In fact, the non-obstante clause as contained in Section 185 of the Delhi Reforms Act which is a complete code in itself, bars any Court except the courts mentioned in Section 7, Schedule 1 of the Act to take cognizance of any suit/application or the proceedings as mentioned in column III. The plaintiff having sought declaration of bhumidhari rights in respect of the agricultural land in question, under the provisions of Section 11 of the Act, could have therefore only approached the SDM of the area and no other forum for the said relief. Hence, it cannot be stated that the plaintiff was not before the Court of competent jurisdiction for the relief sought u/s 11 of the Act.

12. Furthermore, as admitted by learned Counsel for the plaintiff himself, the reliefs sought by the plaintiff in the present suit are of a different nature. Admittedly, the factum of the sale of the agricultural land subject matter of the

present suit, came to the knowledge of the plaintiff in the month of January 1994 itself. Hence, for the plaintiff to claim any relief as sought in the present suit, he ought to have approached this Court within the period of limitation as prescribed under the Limitation Act. At this stage, counsel for the plaintiff seeks to place reliance on Article 109 of the Limitation Act to state that as the agricultural land in question is an ancestral property governed by Mitakshra Law, the plaintiff is entitled to seek relief of setting aside the alienation, within a period of 12 years from the date the alienee takes possession of the property. In the first instance, for seeking any such declaration, the plaintiff ought to have impleaded, his father, uncle and brothers, which he has not done. But this is a curable error. Taking the case of the plaintiff at the highest and assuming that Article 109 of the Act is applicable to the facts of the present case, though not pleaded in the application, the plaintiff could have at best, approached this Court within a period of 12 years from the date when the alienees took possession of the property. Admittedly, the sale deeds were executed in respect of the agricultural land in question in favour of defendants No. 1 to 16 on 12.1.1994. Hence, even when measured by the aforesaid yardstick, the period of 12 years expired on 11.1.2006. Thus, on the face of it, the present suit instituted by the plaintiff on 08.4.2008 is patently barred by limitation and the delay in filing the same cannot be condoned.

13. Condonation of delay is a matter of discretion of the Court. The length of delay is not as relevant as the acceptability of the explanation offered by the litigant. At the end of the day, courts are meant to advance substantial justice and adjudicate the disputes between the parties. As observed by the Supreme Court in the case of N. Balakrishnan Vs. M. Krishnamurthy, , the time limit fixed for approaching the courts in different situations is not because on the expiry of such time, a bad cause would transform into a good cause. The court went on to observe as below:

11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest republic up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

14. Counsel for the plaintiff seeks to place reliance on the judgment rendered by the Supreme Court in the case of *P. Sarathy v. State Bank of India* reported at (2002) 5 SCC 355 to state that the provisions of Section 14 of the Limitation Act do not speak of a "Civil Court", but only of a "court" and that it is not necessary that the "court" spoken of in Section 14 should be a "Civil Court". In the facts of the present case, there is no dispute that the Court of the SDM is not a "Court" within the meaning of the provisions of the Section 14 of the Limitation Act. However, the same cannot take the case of the plaintiff further for the reasons noted above.

15. Another judgment relied upon by the counsel for the plaintiff is entitled *Roshanlal Kuthalia and Others Vs. R.B. Mohan Singh Oberoi*, . He submits that just as observed by the Supreme Court in the aforesaid mentioned judgment that a sine qua non for a claim u/s 14 of the Act is that the earlier proceeding is prosecuted in good faith, the plaintiff has been prosecuting his case in good faith and is entitled for exclusion of time. The aforesaid fact is not disputed, but this is not the case in the matter in hand for the reasons that the primary requirement for seeking exclusion of time is that the matter was being prosecuted before a court suffering from a defect in jurisdiction. The said requirement is not fulfilled by the plaintiff. There is no defect in jurisdiction. The plaintiff is in fact, continuing to prosecute the litigation initiated by him under the provisions of the Delhi Land Reforms Act.

16. The last judgment that the learned Counsel for the plaintiff seek to rely upon is entitled *Vijay Kumar Rampal and Others Vs. Diwan Devi and Others*, . In the aforesaid judgment, the Supreme Court has observed that in computing the period of limitation of any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding against the defendant, shall be excluded where the proceeding relates to the same matter in issue and is prosecuted in good faith in a Court which suffers from a defect of jurisdiction and is unable to entertain it. The expression "good faith" was held to qualify prosecuting proceedings in a Court which ultimately is found to have no jurisdiction. In the present case, the plaintiff is still prosecuting his case before the Financial Commissioner as the appeal is filed by him against the order of the Deputy Commissioner, upholding the order of the SDM, is admittedly pending. Hence, it is not the case of the plaintiff that the relief sought by him u/s 11 of the Delhi Land Reforms Act could not have been granted by the learned SDM in his favour. In these circumstances, by any stretch of imagination it cannot be held that the court of the learned SDM suffers from a defect of jurisdiction and that the SDM could have not granted the relief sought by the plaintiff in the petition originally filed by him u/s 11 of the Act.

17. In view of the aforesaid facts and circumstances, this Court is unable to persuade itself to exercise its powers under the provisions of Section 14(1) of the Limitation Act in favour of the plaintiff for condoning the delay in instituting the present suit as the said provision is not applicable to the facts in hand. Nor can

Article 109 of the Act come to the assistance of the plaintiff as over 12 years have expired since the date the alienees (defendants No. 1 to 16 herein) took possession of the suit property. Therefore, the application filed by the plaintiff for condonation of delay of 818 days for instituting the present suit is rejected. As a consequence thereto, the suit is rejected as being barred by limitation. The other applications are also dismissed.