

(2007) 10 DEL CK 0063

In the Delhi High Court

Case No : Regular First Appeal (OS) No's. 90-94 of 2006

Sushil Bhasin and Others

APPELLANT

Vs

Sundeeep Gupta and Others

RESPONDENT

Date of Decision : 01-10-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 6, Order 7 Rule 11, Order 7 Rule 6
Contract Act, 1872 — Section 36
Limitation Act, 1908 — Article 120
Limitation Act, 1963 — Section 9

Citation : AIR 2008 Delhi 44 : (2008) 1 BC 371 : (2007) 98 DRJ 521 : (2007) 7 ILR Delhi 110

Hon'ble Judges : Aruna Suresh, J;A.K. Sikri, J

Bench : Division Bench

Advocate : A.S. Chandhiok, B.K. Sood and Yoshodhara Anand, for the Appellant; Valmiki Mehta Sandeep Aggarwal, Kamal Mehta, Praveen Chauhan and A. Sharma for respondent Nos. 2 and 3 and Sandeep Khurana, for the Respondent

Final Decision : Dismissed

Judgement

Aruna Suresh, J.—The suit of the appellants herein, filed on the original side of this Court, has been dismissed by the learned single Judge as

barred by limitation vide judgment and decree dated 21.8.2006. The learned Judge opined that even on the basis of the averments made in the

plaint, the suit was ex facie time barred and, Therefore, there was no need to even issue summons to the defendants. Dissatisfied by such a course

of action adopted by the learned single Judge, the appellants have preferred this appeal.

2. Notice in this appeal was issued to the respondents, who were defendants in the suit. We heard learned Counsel for the appellants and

defendants at length.

3. Before advertng to the controversy raised and taking note of the submissions of the respective counsel, it would be necessary to take stock of

certain facts, as pleaded by the appellants in the plaint. We do so because of the simple reason, namely, at this stage there is obviously no written

statement and version of the respondents/ defendants has not come on record. Furthermore, in any case, when the learned single Judge did not

even feel the requirement of issuing summons and dismissed the suit as time barred on the basis of averments made in the plaint, we have

necessarily to look into those averments only which are traversed in the plaint.

4. One Shri K.D. Bhasin and his wife Smt. Savitri Bhasin (hereinafter referred to as the "owners") entered into an agreement dated 24.11.1970

with another person, namely, Shri S.K. Gupta (hereinafter referred to as the "Contractor"). This agreement was for construction of a building on

the plot No. 40, Block-A situate at Vasant Marg, New Delhi (hereinafter referred to as the "suit property). Shri K.D. Bhasin wanted to have a 2"

story building constructed on the suit property, for which purpose he had got sanctioned relevant plans by the appropriate authorities. Agreement

contains the specific averment that as he was himself unable to invest the amount towards construction and completion of the building within the

time required by the authorities, he agreed to give the contract of construction of the said building to the contractor. Total cost of construction was

fixed at Rs. 4 lacs. Some of the relevant terms and conditions stipulated in the said agreement on which parties agreed, are as under:

1. That the second party has made a deposit of a sum of Rs. 96,000/- with the first party for due performance of the terms and conditions of this

contract of construction, and on account of the delivery of possession of the plot of land to the second party by the first party.

2. That the first party has also delivered the vacant possession of the entire said piece of land to the second party for purpose of the construction of

a 2" storey building at a total cost of Rs. 4,00,000/- and has deposited the original documents of title i.e. the allotment order, perpetual lease deed

and the sanctioned plans of the building, with the second party for the performance of the terms of this agreement.

xx xx xx

4. That after the construction and completion, the said party shall give three

months" prior notice to the first party to pay the entire cost of construction as stated above and also refund Rs. 96,000/- deposited by the second party with the first party and the first party shall take over the complete possession and control of the said building and the land underneath.

xx xx xx

6. That in case the first party defaults in payment of the cost of construction of the second party and get the possession of the property, within the period of three months, the second party shall have the right to acquire ownership of the entire property constructed and the entire piece of land and shall be entitled to have the said plot of land transferred and registered in his own name or in the name of his nominee and for that purpose the second party will be entitled to compel the first party to execute regular deed of sale with respect to the entire piece of land and the building constructed thereon at the cost and expense of the second party or the second party may also call upon or compel the general attorney of the first party to do the same i.e. execute the deed of sale (as per approved draft) in favor of the second party or its nominee and have the same registered with the Sub-Registrar of Assurance, New Delhi with the prior approval of the Chief Commissioner, Delhi at the entire expenses of the second party.

7. On default by party No. 1 to pay the entire cost within stipulated time, party No. 2 is authorized to exercise his right vide Clause 6 above. After exercising such a right Part (sic) No. 1 shall not be liable to the refund of the said deposit of Rs. 96000/- and shall not be called upon to pay any other amount or expenses incurred by party No. 2. The transfer of the property including building in favor of Party No. 1 or his attorney, shall be deemed as full and final settlement and payments of the entire dues of the party No. 2.

xx xx xx

12. The three months notice mentioned in paras 4 and 6 above by the second party shall not be served before lapse of seven years of the signing of this Agreement.

xx xx xx

14. The party No. 2 has agreed to start construction of the house with immediate

effect and complete it as stipulated in the lease deed of the Home Ministry's House Building Coop. Society.

xx xx xx

16. That in case of any disputes or differences over any interpretation of this agreement or relating to the above said piece of land or the property

constructed thereon, the same shall be referred to the Arbitration of Shri Vijay Kumar Gupta, Advocate, 2 Bazar Lane, Bengali Market, New

Delhi, and Shri Yog Raj Sethi, Advocate, 41, The Mall, Simla, who are well known to both the parties and their award shall be binding on both

the parties.

5. As per the aforesaid terms, the contractor gave a sum of Rs. 96,000/- to the owners by way of security and the contractor was to be in

possession of the plot and start construction. The agreement also mentions, as is clear from the aforesaid clauses, that after the construction of the

building the contractor was to give three months" prior notice to the owners to pay the entire cost of construction and also refund Rs. 96,000/-

deposited by the contractor as security and upon payment/ refund of the amount demanded, the owners were to be given possession of the plot,

which was given for construction purposes, and the property so constructed thereon. The contractor was to remain in undisputed actual physical

possession of the property till the entire cost of construction incurred thereon was refunded by the owners to the contractor. He was also entitled

to let out and retain the same for realisation of the amount deposited and spent along with interest mentioned therein.

6. Clause 6 of the agreement is to the effect that in case of default in payment of cost of construction within a period of three months from the date

of demand, the contractor would be entitled to acquire ownership of the land and get the same registered in his own name. This notice of demand

was, however, to be served only after a lapse of seven years from the date of execution of the construction agreement dated 24.11.1970.

7. It is stated in the plaint that Shri K.D. Bhasin died on 27.8.1972. However, construction had not been completed by then. Taking advantage of

the death of Shri Bhasin, the contractor delayed the construction and did not complete it for a long time. He never intimated the mother of the

appellants/plaintiffs, who was joint owner, about the completion of the

construction of the building. Smt. Savitri Bhasin also died on 11.5.1993.

The contractor had died earlier on 5.6.1987. The plaintiff Nos. 1 to 4 in the plaint are the sons of Shri K.D. Bhasin and Smt. Savitri Bhasin.

plaintiff No. 5 is the widow of Shri Ramesh K. Bhasin, another son of Shri K.D. Bhasin, who died on 7.3.1997. Defendant Nos. 1 to 3 are the

three sons of the contractor and defendant No. 4 and 5 are the two daughters of the contractor.

8. In para 11 of the plaint, it is alleged that the plaintiff Nos. 1 to 4 and husband of plaintiff No. 5 were pursuing their respective vocations and as

such were settled in different places in India and USA. Their mother Smt. Savitri Bhasin alone had been looking after the affairs. They became

aware of the suit property only after the death of their mother and, thus, started ascertaining the details. In April 2000, the plaintiffs applied to

DDA for mutation of the suit property in their favor and in response thereto a letter was received from the DDA stating inter alia that one Shri

Jagtar Singh, posing himself as general attorney holder of late Shri K.D. Bhasin, had applied for conversion of the suit property in the names of the

defendant Nos. 1 to 3. The plaintiffs intimated the DDA that the suit property had never been sold and they are not aware of any Jagtar Singh and

further that the defendants were in illegal possession of the same. Thereafter, it was revealed that application for conversion of the property from

leasehold to freehold had been submitted by Shri Jagtar Singh on behalf of the defendants. This application for conversion was, however, rejected

by the DDA in July 2000. On the other hand, application filed by the plaintiffs for mutation was allowed by the DDA vide its letter dated

16.2.2006. The plaintiffs also alleged in para 18 of the plaint that from inspection of the record of the DDA, they came to know of the filing and

pendency of the Suit No. 1071/2002 in the High Court. This suit is filed by the defendant No. 1 against the defendant No. 2 as well as the sisters,

namely, defendant Nos. 4 and 5 for partition of the suit property on the pretended premise that the contractor was the absolute owner of the suit

property, without disclosing as to how he became the owner of the property. The plaintiffs filed an application for impleadment in the said suit,

which is pending. The plaintiffs also got a legal notice dated 4.4.2006 served upon the defendants demanding recovery of possession and also

claimed damages computed at Rs. 10 lacs per month. Reply dated 11.4.2006 was received from the defendant Nos. 2 and 3, through their

Advocate, alleging therein that the property having been agreed to be sold by the father of the plaintiffs to the father of the defendants, the

defendants had become the owner thereof. On these averments, the plaintiffs filed the suit with the following prayers:

(a) a decree for recovery of possession of suit property in favor of plaintiffs and against the defendants directing the defendants to deliver vacant

and peaceful possession of the property bearing No. A-40, Vasant Marg, Vasant Vihar, New Delhi to the plaintiffs.

(b) pass a decree for Rs. 40 lakhs in favor of plaintiffs and against the defendants or such of defendants as this Hon''ble Court deems fit being

damages for the suit property w.e.f. April 1, 2006 till 31st July, 2006 and continue to pay damages @ Rs. 10 lakhs per month for a period

thereafter till delivery of the physical and vacant possession of the property @ Rs. 10 lakhs per month, being the amount payable for occupation of

similarly situated property in Vasant Vihar area.

(c) decree the suit with costs.

(d) pass such other or further order(s) as this Hon''ble Court may deem fit and proper in the facts and circumstances of the case.

9. The learned single Judge, interpreting the agreement dated 24.11.1970, opined that this agreement was in fact a transaction for sale of the plot

of land in view of the following clauses:

a) the agreement envisaged that if the owner does not pay to the builder the sum of Rs. 4 lacs along with security deposit of Rs,96,000/-, the land

and building would become the property of the builder;

b) it also records that with effect from the date the builder comes in possession of the property, he shall be liable to pay property taxes for the said

land. Therefore, the intention was to transfer title, which was also clear from the fact that the property tax was to be paid by the contractor which

normally would not be paid by a builder whose job is to only do construction on the land;

c) the contractor was even handed over title deeds to that property which would not normally be done if it was a simple construction agreement;

and

d) clause stipulating that the owner would lose right to the plot on default and retaining Rs. 96,000/- shows that payment of Rs. 96,000/- was

nothing but the sale consideration. The intention, Therefore, according to the learned single Judge, was to pass on the "interest" in the land by way

of the said agreement to sell. In support, he referred to the decision rendered on that date itself by the learned single Judge in CS (OS) No. 659-

A/1986. That apart, the suit was dismissed as barred by limitation observing:

20. None of the decisions helps the case of the plaintiff for the reason I note that in the instant case agreement in question was entered between the

parties on 24th November, 1970. Assuming that the predecessor-in-interest of the defendants did not give a notice to predecessor-in-interest of

the plaintiffs as contemplated by Clause (4) of the agreement, surely, plaintiffs and previously their predecessor-in-interest could not have waited

indefinitely. Within a reasonable period of time after agreement was entered into, cause accrued to the plaintiffs (their predecessor-in-interest) to

serve a notice seeking possession and on denial to file a civil suit.

21. When does a right to sue accrue" It depends on what right was infringed or duty breached.

22. Law is a practical instrument, a working tool in a work-a-day world. Rules of law follow common sense and must conform to the notions of

commercial men and ordinary folk.

23. He who comes into possession of somebody's property and is under an obligation to return possession, must return possession within the

period prescribed under the contract and if no period is prescribed, within a reasonable time. A corresponding duty is on the person giving

possession to seek return of possession within a reasonable time.

24. Agreement between the parties did not specify the time within which building had to be constructed. Thus, it has to be presumed that building

had to be completed within a reasonable period of time. Notice envisaged by Clause (4) of the agreement had to be issued when building was

completed. Said notice has to be within a reasonable period of time. If not issued, owner had to ask for restoration of possession within a

reasonable time.

25. Today, 36 years have gone by.

26. I dismiss this suit as barred by limitation.

10. Critiquing the aforesaid approach of the learned single Judge, it was argued by learned Counsel for the appellants/plaintiffs that the plaintiffs

remain the owners of the property inasmuch as there were no documents in possession of the defendants on the basis of which they could claim

transfer of title. He contended that the plaintiffs' parents were admittedly the owners of the property and an owner of a property does not get

divested of his right except under the Transfer of Property Act. The owners had entered into agreement for construction in favor of the contractor,

which agreement was an unregistered document, and even if it is treated as an agreement to sell, merely on the basis of the said agreement to sell,

the contractor or for that matter his legal representatives, namely, the defendants, could not claim title over the property. He also submitted that the

learned single Judge had not invoked the provisions of Order XII Rule 6 of the Code of Civil Procedure, 1908 (for short, "CPC"). The plaint was

rejected under Order VII Rule 11(d) CPC. However, while exercising power under this provision, each word of the plaint is to be treated as

correct and the learned single Judge was not supposed to enter into the merits and give his findings that the agreement in question was a transaction

for sale and that the plaint proceeded on the basis that Shri S.K. Gupta was the contractor. It was also pleaded that under Clause 6 of the

agreement, he had only the right to acquire, after giving notice of three months, not before the expiry of seven years from the date of agreement,

which right was never exercised by him and, Therefore, Clause 6 did not apply. He further submitted that till such a notice is given, Clauses 4 and

6 would not come into operation and, Therefore, there was no question of starting of limitation period before coming into effect the aforesaid

clauses. He also submitted that for the first time vide reply dated 11.4.2006 to the legal notice of the plaintiffs, the defendants asserted their title by

alleging that they had become the owner of the property and that was the cause of action for the plaintiffs to file the suit and, Therefore, the suit

could not be treated as time barred. He also pleaded that power of attorney, which was given, was not registered and in any case neither any right

to sell was given therein nor any interest was credited. He referred to the certificate dated 20.10.1975 executed by the contractor wherein he had

certified that a sum of Rs. 96,000/- was given by him to the owners "on account of security, against construction agreement"" of the suit property

and this certificate also did not show that he had become owner. He also referred to the affidavit dated 25.11.1970 given by Shri K.D. Bhasin

which, according to him, explained the reason for deposit of the original title deeds with the contractor inasmuch as para 4 of the said affidavit

reads as under:

4. That we have deposited the original title deeds that is, the original allotment letter of the plot, perpetual lease deed and original sanctioned plans

with Shri S.K. Gupta, contractor against the repayment of all moneys that may be founds (sic) due from us to Shri S.K. Gupta.

He also pointed out that the learned single Judge ignored the fact which was specifically pleaded in the plaint that the DDA had not accepted the

application for mutation of the property in the name of the defendants and rather mutated the property in favor of the plaintiffs treating them as the

owners of the property.

11. On a question as to when right to sue accrues, the learned Counsel relied upon the judgment of the Supreme Court in *Mst. Rukhmabai Vs.*

Lala Laxminarayan and Others, He also relied upon the judgment of the Supreme Court on *Ramesh B. Desai and Others Vs. Bipin Vadilal Mehta*

and *Others*, . He further submitted that the defendants could not claim ownership by adverse possession, in the facts of this case, in view of the law

laid down by the Apex Court and this Court in the following cases:

(i) *Konda Lakshmana Bapuji Vs. Government of Andhra Pradesh and Others*,

(ii) *Harbans Kaur and Others Vs. Bhola Nath and Another*,

(iii) *Aishwarya Dev Chand Katoch v. T.M. Properties Pvt. Ltd. and Ors.* 133 (2006) DLT 89

12. On the contrary, the submission of learned Counsel for the respondents was that the learned single Judge could construe the agreement which

was placed on record and was an admitted document on which no evidence was required and he rightly held that it was in the nature of an

agreement to sell. He further submitted that the power of attorney executed by Shri K.D. Bhasin, as is clear from its terms, is an irrevocable power

of attorney which was even accepted by the appellants. For 36 years after the signing of the agreement, no right over the property was ever

exercised by the plaintiffs or their predecessors. He submitted that a conjoint reading of Clauses 4, 6 and 12 would indicate that after 7 years,

three months notice could be given to demand the payment, which means 7 years and 3 months from the date of agreement dated 24.11.1970

and, Therefore, by virtue of Section 36 of the Indian Contract Act, 1872 limitation period would start from the expiry of this period. If the

construction was not completed, as alleged by the appellants, then as per Clause 14, one year notice is required to be given and no such notice

was ever given. Thus, in such an eventuality, as per Section 9 of the Limitation Act, 1963, the limitation period would have started after one year of

the agreement. Therefore, argued the learned Counsel, in both the eventualities " whether it is stated that construction was complete or construction

was not complete, the suit filed in the year 2006 was time barred. It was, thus, a clear case where the provisions of Order XII Rule 6 CPC were

attracted and on the basis of admissions it could be held that the suit was barred by limitation. In such a case, provisions of Order VII Rule 11

could also be applied and the plaint rejected as time barred. We also took support from the judgment of the Supreme Court in the case of T.

Arivandandam Vs. T.V. Satyapal and Another, , where the Apex Court held:

5. ...If on a meaningful "not formal" reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he

should exercise his power under Order VII Rule 11, C.P.C. 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 X, C.P.C. An

activist Judge is the answer to irresponsible law suits.

13. We have considered the submissions of counsel on either side and have also gone through the record of the suit file summoned by us. Shorn of

all technicalities, the admitted position which emerges may first be taken note of as we are of the opinion that this admitted position would be

sufficient to clinch the issue.

14. The agreement in question for construction of building on the suit property was entered into on 24.11.1970 i.e. approximately 36 years before

the suit in question was filed. The owners of the said plot, namely Shri K.D. Bhasin and Smt. Savitri Bhasin (parents of the appellants), were

unable to raise construction because of lack of funds at their disposal. That was the reason for giving the contract of construction of building to the contractor. In a normal construction contract when the construction is for the benefit of the owners, it is but natural that cost of construction shall be borne by the owners. The contractor, in such an agreement, shall even receive his remuneration/ fee/profits, as the case may be, since he would be doing the job for the owners and has to be compensated for undertaking such a project. The constructive possession of a plot, over which construction is to be carried out, also remains with the owners. In contrast, in the present case the owners of the plot had no money to pay for the construction. On signing of the agreement they rather received a sum of Rs. 96,000/- from the contractor. Cost of construction was fixed at Rs. 4 lacs and that was also borne by the contractor. The agreement specifically recorded that the owners had delivered the vacant possession of the land to the contractor. Not only this, they even deposited the original documents of title, i.e. allotment order, perpetual lease deed and the sanction plan of the building with the contractor.

15. After the completion of construction, the contractor was to give three months' notice to the owners calling upon them to pay the entire cost of construction i.e. Rs. 4 lacs and also refund Rs. 96,000/-. Thus, they were to give Rs. 4,96,000/- to the contractor. Agreement further stipulates that in case of default in payment of the aforesaid amount within three months" from the date of demand, the contractor had right to acquire ownership of the entire property constructed. In such an eventuality, he was also given right to have the said plot of land transferred and registered in his own name or in the name of his nominee and to compel the owners to execute the regular deed of sale of the plot and the building constructed thereon in his favor at his cost and expense. On exercising such a right, liability of the owners to refund Rs. 4,96,000/- was to cease. The purport of this clause, which is Clause No. 6 of the agreement, is to treat Rs. 4,96,000/- as consideration for transferring ownership of the suit property in favor of the contractor even if it is treated to be a contingent agreement, namely, failure on the part of the owners to pay back the sum of Rs. 4,96,000/- after the demand, the contractor shall acquire the ownership of the suit property against the payment of Rs. 4,96,000/-

paid/spent by him.

16. No doubt, the aforesaid amount was to be paid by the owners within three months" of demand made by the contractor. Case of the appellants

in the suit was that no such demand was made, which could not be made before the expiry of 7 years from the date of the agreement. However,

we are dealing with the question of limitation for filing the suit by the appellants which is to be judged keeping in view the nature of prayers. The suit

filed is for recovery of possession and consequential relief of mesne profits, which is predicated on the respondents illegally occupying the suit

property. For this purpose, we proceed on the hypothesis, which is otherwise evident on record, that after the construction of the suit property, the

contractor remained in possession thereof ever since the possession of the suit land was handed over to the contractor. Even after the construction,

he continued to occupy the same. No doubt, he did not give notice to the owners to refund the amount of Rs. 96,000/- plus cost of construction.

Fact remains that the owners or their successors-in-interest also did not assert any right to recover the possession of the suit property from the

contractor or his successors-in-interest after the death of the contractor. It is in this context the prayer for passing a decree for recovery of

possession of the suit property is to be seen.

17. As per Clause 14, the contractor was to start construction of the house immediately on signing of the agreement and was to complete it, as

stipulated in the lease deed of the society. If the construction was not complete, no notice was given by the owners, which could be given as per

the said clause. The owners could also raise dispute about non-construction and could seek arbitration, as provided under Clause 16, which was

also not done. Therefore, insofar as question of completion or non-completion of construction is concerned, limitation for such a dispute could

have started after one year of the agreement. No such dispute was raised. On the other hand, the contractor occupied the premises after the

construction. If he did not give the notice of refund of security amount and cost of construction, as per Clause 4 read with Clause 6 of the

agreement, which was to be given after 7 years of the date of the agreement, the owners also did not exercise their right to claim back the

possession by offering the contractor the aforesaid amount. Under these

circumstances, learned Counsel for the respondent is right in his submission that period of limitation for seeking possession could commence after lapse of 7 years and 3 months (which is the period for payment) and the suit for possession was filed after 36 years of the said agreement.

If the question of limitation is examined from the aforesaid perspective which, according to us, is the correct perspective, the submission of learned

Counsel for the appellants to the effect that the respondents could not claim ownership by adverse possession would be no avail. It is the

appellants who had filed the suit for possession and consequential relief for mesne profits and the question of limitation was to be examined keeping

in view these prayers. The court was not concerned with the ownership of the respondents and the issue on adverse possession did not even arise

for consideration. Therefore, the judgments cited by learned Counsel for the appellants on this issue would have no bearing.

18. The case of Rukhmabai (supra) would also not come to the rescue of the appellants. In that case, Article 120 of the Limitation Act, 1908 was

involved and the court was to decide as to what would be the starting point of limitation. The court opined that there can be no "right to sue" until

there is an accrual of right asserted in the suit and its infringement, or at least a clear and unequivocal threat to infringe that right by the defendant

against whom the suit is instituted. It was further held that where there are successive invasions or denials of a right, the right to sue under Article

120 accrues when the defendant has clearly and unequivocally threatened to infringe the right asserted to the plaintiff in the suit.

In the present case, as noted above, the appellants never asserted their alleged right for all these years and there was no question of refuting that

right or threatening to infringe that right by the defendants. On the contrary, the predecessor of the defendants, i.e. the contractor, was put in

possession of the suit property on signing the agreement dated 24.11.1970 and after the construction of the property he remained in possession of

the suit property and after his death, his legal heirs continued to remain in possession without any interruption. The appellants never took any steps

to challenge the said possession of the defendants or their predecessor-in-interest nor asserted their right to claim back possession. After 36 years,

the suit for possession, Therefore, would clearly be time barred.

19. In *Ramesh B. Desai (supra)*, the Supreme Court was categorical in laying down the principle that as the starting point of limitation has to be ascertained on facts in every case. The plea of limitation cannot be decided as an abstract principle of law divorced from facts. No doubt, the court opined that unless it becomes apparent from the reading of the plaint/petition, on the principle of demurrer, that the same is barred by limitation, the plaint/petition cannot be rejected under Order VII Rule 11(d) of the CPC. In the instant case, admitted facts which could be culled out from the reading of the plaint and documents, i.e. the Agreement, are sufficient to arrive at a conclusion that the relief prayed for was ex-facie time barred.

20. In these circumstances, we are of the opinion that the learned single Judge rightly dismissed the suit. This appeal is, accordingly, dismissed with no order as to costs.