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2024 SCC OnLine Del 8583 : (2025) 316 DLT 11

In the High Court of Delhi at New Delhi

(BEFORE MANMEET PRITAM SINGH ARORA, J.)

Nitin Saxena ... Plaintiff;

Versus

Amit Saxena ... Defendant.

CS(OS) 649/2023 & I.As. 20451/2023, 24647/2023, 34711/2024, 34715/2024[§]

Decided on December 6, 2024, [Reserved on : 9th August, 2024]

Advocates who appeared in this case :

Mr. Pawanjit Bindra, Sr. Advocate with Ms. Madhu Sudan, Mr. Vikhyat Oberoi, Mr. Ankit Kakar, Ms. Shreya Vedantika Mehra and Mr. Shivam Prakash, Advocates.

Mr. Saket Sikri, Mr. Anirudh Bakhru, Mr. Cheitanya Madan, Ms. Srishti Banerjee, Mr. Sahil, Ms. Archita Mahaawat, Advocates.

The Judgment of the Court was delivered by

MANMEET PRITAM SINGH ARORA, J.:—

I.A. 24647/2023

1. This is an application filed by the defendant under Order VII Rule 11(d) of the Civil Procedure Code, 1908 ('CPC') seeking rejection of the reliefs sought in the plaint on the ground that it has been filed beyond the limitation period of three years as prescribed under the Limitation Act, 1963 ('Limitation Act').

Arguments on behalf of the defendant

2. Mr. Saket Sikri and Mr. Anirudh Bakhru, learned counsels for the applicant/defendant stated that the present suit filed in October, 2023 seeking a decree of declaration and cancellation of the two release deeds, which were admittedly executed by the plaintiff on 13.08.2014 in respect of the property bearing No. WZ-300A, built-up on Plot No. GL -11, part of Khasra No. 839-840 situated in the area of Village Tihar, New Delhi now known as G-Block, Hari Nagar, New Delhi admeasuring total area of 200 sq. yds. ('suit property') is barred by limitation. It is stated that as per Articles 58 and 59 of the Limitation Act the period of limitation to seek cancellation expired on 13.08.2017 and the present suit filed in October, 2023 after a lapse of more than 9 years is, therefore, barred in law.

2.1. The learned counsels placed reliance on the judgment of the Supereme Court in *Dahiben* v. *Arvindbhai Kalyanji Bhanusali*[1] to

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contend that in similar facts the suit seeking cancellation of registered sale deed was dismissed for being filed beyond the limitation period.

2.2. It is stated that the allegation in the plaint that the consideration of Rs. 55,00,000/- recorded in the release deeds remains unpaid is without any merit as the plaintiff has admitted receipt of the entire consideration before the concerned Sub-Registrar at the time of the registration of the said release deeds.

2.3. It is stated that non encashment of the cheques mentioned in the release deeds by the plaintiff would entitle the plaintiff to maintain a suit for recovery of the said consideration; however, no relief for cancellation can be sought on this basis. In this regard the counsels relied upon the observations of Supreme Court at paragraph 29.9 of the judgment in *Dahiben* v. *Arvindbhai* (supra).

Arguments on behalf of the plaintiff

3. In reply, Mr. Pawanjit Bindra, learned Senior Counsel appearing on behalf of the non-applicant/plaintiff stated that the two release deeds in respect of the suit property were executed by the plaintiff on the representation of the defendant that the said documentation would facilitate obtaining statutory permissions and licences from the local authorities, which in turn would enable fetching higher rental for the suit property. He stated that no consideration was received by the plaintiff under the release deeds as the said documents were not intended to denude the plaintiff of his 50% ownership rights in the suit property. He stated that the transaction of release recorded in the said release deeds was never intended to be acted upon and the documents are a sham.

3.1. He stated that the suit property was thereafter let out at a monthly rental of Rs. 4,00,000/-. He stated that though the release deeds were executed on 13.08.2014, however, the plaintiff herein continued to receive 50% share in the rental income from the defendant until January, 2017 in consonance with the understanding of the parties that the plaintiff continued to remain the 50% owner of the suit property. He stated that defendant stopped remitting 50% rental from February, 2017 on the plea that his bank accounts have been declared Non-Performing Assets (NPA) in the two loan accounts of Noble Welfare Charitable Trust vide letter dated 04.02.2016 and Nitraj Agro Food vide letter dated 04.02.2016.

3.2. He stated that the plaintiff demanded the arrears of rent in March, 2022 and requested for partition of the suit property, however as the defendant refused to do so, the present suit was filed in October, 2023.

3.3. He stated that the cause of action for seeking the cancellation of the registered sale deeds arose in March, 2022 when the plaintiff demanded the arrears of rent and the defendant declined to share the

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rentals. He stated that it was at this stage that the plaintiff discovered the fraud practiced by the defendant in influencing the plaintiff to execute the release deeds. He stated that, therefore, the date of registration of the release deeds i.e. 13.08.2014 is not relevant for deciding the issue of limitation for the relief of cancellation. He relied upon the judgment of this Court in *Shaheed Memorial Society* v. *Promila Kishore*[2] to contend that the limitation for filing a suit seeking cancellation of an instrument starts not from the date of instrument but when the plaintiff discovered the fraud practiced on him/her.

3.4. He stated that the plaintiff herein would prove at trial through oral evidence that he was receiving rentals till January, 2017 even after executing the release deeds. He stated that plaintiff does not have any documentary evidence to show that any rental income was received by the plaintiff for the suit property from the tenant after execution of the release deed dated 13.08.2014.

3.5. He stated that the reliance on the judgment *Dahiben* v. *Arvindbhai* (supra) is distinguishable and is inapplicable to the facts of this case. He stated that in the said case Supreme Court has not considered Section 10 read with Section 25 of Indian Contract Act, 1872 ('Contract Act').

Findings and analysis

4. This Court has heard the learned counsel for the parties and perused the record.

5. The present suit has been filed with respect to property bearing no. WZ-300A, built-up on Plot No. GL-11, part of Khasra No. 839-840 situated in the area of Village Tihar, New Delhi now known as G-Block, Hari Nagar, New Delhi admeasuring total area of 200 sq. yds.

6. The plaintiff and defendant are brothers. The suit property was initially owned by the parents of the parties in equal shares.

7. The father of the parties purchased 50% of the suit property vide registered sale deed dated 21.03.1997. The mother of the parties separately purchased 50% of the suit property vide a separate registered sale deed also dated 21.03.1997.

8. The father of the parties i.e., late Sh. Shamsher Bahadur Saxena expired on 01.08.2005. The father's 50% share in the suit property devolved upon the parties herein in equal shares by virtue of the registered Will dated 12.03.2001. In this manner the plaintiff, defendant and their mother became owners of the suit property in the ratio of 25 : 25 : 50. It is a matter of record that the suit property was let out in 2008 and rent was received by the parties along with their mother in the aforesaid ratio of 25 : 25 : 50.

9. The mother of the parties i.e. late Smt. Kanta Saxena expired on 18.12.2013. The mother's 50% share in the suit property also devolved

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upon the parties equally by virtue of the registered Will dated 12.03.2001. With this devolution of interest, the plaintiff and defendant became equal owners of the suit property.

10. In this manner, the suit property was inherited by the parties from their deceased parents in equal shares through testamentary succession.

11. The plaintiff admits that thereafter in the year 2014 he had executed two separate registered release deeds in respect of his entire half undivided share in the suit property in favour of the defendant herein. The release deeds are both dated 13.08.2014 and are duly registered with the concerned sub-registrar S.R-II, Janakpuri, Delhi. The relevant clauses of the release deed read as under:

> "…..
>
> 1. That in consideration of the said sum of Rs. 27,50,000/- (Rs. Twenty Seven Lac Fifty Thousand only) which amount the Releasor (s) have received Releasee(s) in full an final discharge and settlement prior to the execution of this deed as per details mentioned above and the Releasor(s) both hereby Release and permanently transfer etc. his/er/their half undivided share in the Said Property with all its construction fitting and fixture therein, with all their rights, passage rights privileges and hereinafter the said Releasee(s) has become the sole and complete owner of the said Property and he/she/they can use and enjoy his/her/their full ownership rights, in any manner he/she/they likes and he/she/they can get mutated transferred the said Property in his/her/their own name(s) with the M.C.D (House tax Department) B.S.E.S Rajdhani Power Ltd. N.D.P.L., D.J.B., Delhi Administration, Delhi Government or any other authorities concerned on the basis of this Release Deed with consideration and the Releasor(s) shall have no objection for that and not challenge the same at any time or in any circumstances in any Court of law.
>
> …….
>
> 12. That the Releasor(s) further declare to the Releasee(s) that I/We have no right, title and interest regarding the said property, after execution of this Release Deed & the Releasee(s) shall use, hold or enjoy the same in any manner as he/she/they likes.
>
> ……."

13. A perusal of the clauses of the release deeds evidences that the said instrument operated to irrevocably transfer plaintiff's right, title and interest in the suit property in favour of the defendant. And with the execution of the said release deed the right, title and interest of the plaintiff in the suit property stood extinguished.

14. The plaintiff has pleaded in the plaint that the reason for

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executing the registered release deeds in the year 2014 was only to enhance the intrinsic value of the suit property so as to make it possible to earn higher rental income from the suit property; and there was no intention to actually transfer interest in favour of the defendant. The said reasons pleaded at paragraph 10 of the plaint reads as under:

> "10. That in the year 2014 the Defendant approached the Plaintiff and expressed his intention to let out the said suit property for commercial purposes so that they can fetch higher rent. He then told the Plaintiff that for the said renting out of the suit property, they needed to obtain certain permissions from the local authorities. The Defendant further said that to deal with the local authorities for obtaining requisite licenses/permissions, it will be convenient if licenses/permissions be obtained in name of one person and asked the Plaintiff to execute certain documents in his name for the said reason."

15. The plaintiff has alleged that, thus, the release deeds were sham documents and there was no intention of the plaintiff to actually transfer right, title and interest in favour of the defendant.

16. The reason set up at paragraph no. 10 of the plaint is the only explanation furnished in the pleading for alleging that the two release deeds are sham documents.

17. The plaintiff is admittedly an educated man with reasonable wealth. The plaintiff, thus, had access to legal opinions while exercising its judgment for executing the release deeds. In the considered opinion of this Court, the reason furnished at paragraph no. 10 of the plaint for executing the release deeds are neither reasonable nor plausible, as the said reasons would furnish grounds for a owner/party to execute a Special Power of Attorney (SPA) in favour of another person to deal with the immovable property with a tenant. This is a common practice prevalent in the market. However, it does not appeal to reason common prudence that an owner would execute registered release deed in favour of another party to facilitate letting out of the immovable property. The registered release deeds have the effect in law of irrevocably transferring the right, title and interest of the releasor in favour of the releasee. This is also evident from the clauses of the release deeds referred to hereinabove.

18. There is a presumption of validity attached to a registered document. The said presumption of validity cannot be rebutted on the basis of the nebulous pleas as is sought to be alleged at paragraph no. 10 of the plaint. The intention behind registering release deeds and maintaining a public record of such documents in the office of a sub-registrar would be lost if the party executing the release deeds are permitted to resile from the release deeds and negate the effect of the release deeds on such tenuous/frivolous pleas. The public record is

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maintained to enable third parties to rely upon the said record and deal with immovable properties on the basis of the said public record. The registered documents effecting transfer of right, title and interest in the immovable properties cannot be permitted to be negated by the executant of the document on such frivolous and incredulous pleas.

19. To build on this frivolous plea and lend credence to it, the plaintiff in the plaint has further alleged that after executing the release deeds when a tenant was inducted in the suit property, the plaintiff received 50% rental to the tune of Rs. 2,00,000/- per month until January, 2017. The relevant paras of the plaint are 13, 14 and 15 which reads as under:

> "13. That thereafter the Defendant let out the suit property for commercial purposes on rent and started fetching handsome amount of rent of Rs. 4,00,000/- (Rupees Four Lakhs Only) (Approx) per month. The Defendant paid half amount of the said monthly rental income of the suit property to the Plaintiff as his share for about 2 years but thereafter the Defendant started delaying the said payment of share of Plaintiff in the rental income. He then altogether stopped the payment of Plaintiff's share from January 2017 onwards on one pretext or the other. The Defendant informed the Plaintiff that he was under huge debt of Corporation Bank and had been declared NPA in two loan accounts of Noble Welfare Charitable Trust vide letter dated 04.02.2016 and Nitraj Agro Food vide letter dated 04.02.2016 for the total debt of about Rs. 27,00,00,000/- (Rupees Twenty-Seven Crores Only) and therefore he needed funds to close/settle his accounts and promised to pay the entire amount of rental income of his share and promised to make the payment soon.
>
> 14. That the Plaintiff being younger brother of the Defendant, had blind faith upon the Defendant and did not object the false and frivolous promises of the Defendant but the Defendant failed to make the payment of amount of share of the Plaintiff from the rent proceeds fetched from the suit property despite the repeated reminders and demands of the Plaintiff.
>
> 15. In March 2022, the Plaintiff asked the Defendant to make the payment of arrears in the said rental amount qua his share and further requested for the partition the suit property. However, the Defendant refused to do so on one pretext or the other and lastly threatened to create third party interest in the property by misusing the said two release deeds that he got executed in his favour by exercising undue influence, coercion, fraud and misrepresentation upon the Plaintiff. The Plaintiff reserves his right to initiate criminal proceedings against the Defendant for the said offence committed by him."

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(Emphasis Supplied)

20. It may be noted at the outset that the plaintiff's plea of receipt of rental income after executing the release deeds on 13.08.2014 is unsubstantiated from the record. The plaintiff admits that no amount towards rental was received by way of bank transfers. The plaintiff also admits that he has not declared any rental income being received from the suit property in his Income Tax Returns ('ITR') after the execution of the release deeds in the year 2014.

21. The plaintiff filed additional documents on 26.07.2024 and relied upon Form-26 AS TRACES[3] for the assessment year (AY) 2015-2016 to contend that he continued to receive rental for the financial year (FY) 2014-2015 even after the execution of the release deed. However, the plaintiff has since unconditionally withdrawn the said plea after the defendant at the hearing dated 09.08.2024 pointed out the erroneous reliance placed by the plaintiff on the said document. Thereafter, the plaintiff in the written submissions dated 16.08.2024 as well conceded that the Form-26 AS does not reflect any receipt of rent.

22. In the opinion of this Court, the filing of the Form-26 AS by the plaintiff for AY-2015-2016 is not innocuous and was intended to mislead this Court. The filing of the said document on 26.07.2024 and thereafter conceding that it does not reflect receipt of rental income evidence that plaintiff was clutching at straws and making false averments to sustain the plaint.

23. This Court is, therefore, of the considered opinion that the averments made by the plaintiff at paragraph no. 10 does not give rise to any cause of action in favour of the plaintiff to allege that the release deeds are sham documents and thus the plaintiff cannot seek cancellation of the registered lease deeds 13.08.2014 on the said plea. The submission of the plaintiff that by executing the release deeds the intrinsic value of the suit property increased so as to enable fetching higher rental has no basis in fact or in law.

24. Further, the averments made by the plaintiff in paragraphs nos. 12, 13 and 14 to allege that plaintiff was receiving rental income of the suit property from the defendant is not supported by an iota of evidence with the plaint and the plaintiff admits that it does not possess any documentary evidence whatsoever to prove receipt of the said rental income. In the considered opinion of this Court, oral evidence cannot prove receipt of rental income of Rs. 2,00,000/- per month from the defendant to the plaintiff.

25. The plaintiff has alleged receipt of rental income of Rs. 2,00,000/- per month for the period 2015 to 2017. The said rental income would be liable to income tax. The plaintiff admits that no income tax has been paid on the rental income. The said fact of non-declaration of the

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said income in the ITR are all evidence of the fact that the averments in the plaint are bald pleadings intended to create the illusion of a cause of action, where none exists.

26. With respect to the submission of the plaintiff that he has not received the sale consideration recorded in the release deed, this Court notes that there is no prayer in the suit for recovery of the said amount. The Supreme Court in *Dahiben* v. *Arvindbhai* (supra) recorded that the remedy of the unpaid transferor is to file a suit for recovery but the transferor cannot maintain the relief for cancellation of a registered title deed. Similarly, a Coordinate Bench of this Court has also held in *Praleen Chopra* v. *Honey Bhagat*[4] that in the event the entire sale consideration had not been paid to the transferor, the remedy of the transferor would only be to recover the same from the transferee. The relevant paragraphs of the *Dahiben* v. *Arvindbhai* (supra) judgment read as under:

> "29.8 In *Vidhyadhar* v. *Manikrao* [*Vidhyadhar* v. *Manikrao*, (1999) 3 SCC 573] this Court held that the words "price paid or promised or part-paid and part-promised" indicates that actual payment of the whole of the price at the time of the execution of the sale deed is not a sine qua non for completion of the sale. Even if the whole of the price is not paid, but the document is executed, and thereafter registered, the sale would be complete, and the title would pass on to the transferee under the transaction. The non-payment of a part of the sale price would not affect the validity of the sale. Once the title in the property has already passed, even if the balance sale consideration is not paid, the sale could not be invalidated on this ground. In order to constitute a "sale", the parties must intend to transfer the ownership of the property, on the agreement to pay the price either in praesenti, or in future. The intention is to be gathered from the recitals of the sale deed, the conduct of the parties, and the evidence on record.
>
> 29.9 In view of the law laid down by this Court, even if the averments of the plaintiffs are taken to be true, that the entire sale consideration had not in fact been paid, it could not be a ground for cancellation of the sale deed. The plaintiffs may have other remedies in law for recovery of the balance consideration, but could not be granted the relief of cancellation of the registered sale deed. We find that the suit filed by the plaintiffs is vexatious, meritless, and does not disclose a right to sue. The plaint is liable to be rejected under Order 7 Rule 11 (*a*)."
>
> (Emphasis Supplied)

27. In the same judgment the Supreme Court held that limitation

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for filing a suit for cancellation of instrument would be governed by Article 59 of the Limitation Act and would have to be filed within three years. In the facts of this case, the registered release deeds were executed in the year August, 2014 and the present suit has been filed in October, 2023 i.e., after a lapse of 9 years. It is stated in the plaint that the cause of action for filing the present suit arose in favour of the plaintiff in March, 2022. However, this Court is not persuaded that the facts enlisted in the plaint entitle the plaintiff to file the suit for cancellation of the release deeds in 2022 or on any subsequent dates. The suit is, thus, not only barred by limitation but is also devoid of any cause of action.

28. The submission of the plaintiff that the Supreme Court in *Dahiben* v. *Arvindbhai* (supra) fails to consider the effect of Section 10 read with Section 25 of the Contract Act and, therefore, the said judgment has no application to the facts of this case is incorrect. The consideration payable by the transferee to the transferor is agreed to and recorded in the release deeds. The total consideration recoverable is Rs. 55,00,000/-. The plaintiff herein is entitled to seek recovery of the said consideration in accordance with law as observed by Supreme Court in the aforesaid judgment. Thus, conditions of Section 10 of the Contract Act for making the agreement binding are satisfied and for the same reason Section 25 of the Contract Act is not attracted.

29. Furthermore, the plaintiff at paragraph no. 11 of the plaint has alleged the release deeds were executed by him under 'undue influence' and 'misrepresentation'. The plaint other that parroting the said phrases fails to give any further averments which would persuade this Court to even prima facie believe that indeed undue influence or mis-representation was practiced on the plaintiff. Similarly, the plaintiff at paragraph nos. 15 and 23 has parroted the words undue influence, coercion, fraud and mis-representation. The said paragraphs as well contains no averments to show how the alleged fraud was practiced on the plaintiff by the defendant. The Supreme Court in *C.S. Ramaswamy* v. *V.K. Senthil*[5] has held that bald averments in the plaint cannot be accepted by Courts if the claims are otherwise barred by limitation and pleading of fraud cannot be relied upon by the plaintiff to extend limitation. The relevant paragraph of the judgment reads as under:

> "31. Even the averments and allegations in the plaint with respect to fraud are not supported by any further averments and allegations how the fraud has been committed/played. Mere stating in the plaint that a fraud has been played is not enough and the allegations of fraud must be specifically averred in the plaint, otherwise merely by using the word "fraud", the plaintiffs would try to get the suits within the limitation, which otherwise may be barred by limitation. Therefore, even if the

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submission on behalf of the respondents - original plaintiffs that only the averments and allegations in the plaints are required to be considered at the time of deciding the application under Order VII Rule 11 CPC is accepted, in that case also by such vague allegations with respect to the date of knowledge, the plaintiffs cannot be permitted to challenge the documents after a period of 10 years. By such a clever drafting and using the word "fraud", the plaintiffs have tried to bring the suits within the period of limitation invoking Section 17 of the limitation Act. The plaintiffs cannot be permitted to bring the suits within the period of limitation by clever drafting, which otherwise is barred by limitation. At this stage, a recent decision of this Court in the case of *Raghwendra Sharan Singh* (supra) is required to be referred to……."

(Emphasis Supplied)

30. The judgment of *Shaheed Memorial Society* v. *Promila Kishore* (supra) relied upon by the plaintiff is not applicable to the facts of this case. In the said case the plaintiff society therein was not the executant of the instruments which were sought to be cancelled and thus it was the date on which the plaintiff society therein learnt about the fraudulent transfer deeds, which was considered as the starting point of limitation.

However, in the facts in hand, the plaintiff in the captioned suit is executant of the release deeds and thus the starting point of limitation is the date of execution i.e. 13.08.2014. The averment in the plaint that the cause of action for seeking the relief of cancellation arose in the year 2022 is without any merit.

31. In view of the above discussion, from the averments made in the plaint and the bundle of facts stated in the plaint, this Court is of the view that by clever drafting, the plaintiff has tried to bring the suit within the period of limitation, which otherwise are barred by limitation. Thus, the suit is manifestly vexatious, without any merit and does not disclose a right to sue.

32. Accordingly, the present application is allowed and in exercise of the powers under Order VII Rule 11(a) and (d) CPC, the plaint is hereby rejected.

CS(OS) 649/2023

33. Since the plaint has been rejected, all pending applications stand disposed of.

34. Interim order, if any, stand vacated.

35. All future dates stand cancelled.

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[1] 2020 SCC OnLine SC 562 at paragraph nos. 29.9, 29.13 and 29.19.

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[2] 2020 SCC OnLine Del 2664 at paragraph no. 119

[3] TDS Reconciliation Analysis and Correction Enabling System

[4] (2020) 1 HCC (Del) 534 at paragraph no. 38

[5] 2022 SCC OnLine SC 1330

[§] 2024:DHC:9450

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