

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision : 02.02.2010

+ **CS (OS) 1375/2005 & I.A. Nos.7870-7871/2005**
15591/2008

J.D.JAIN AND ORS Plaintiffs
Through: Mr. Kapil Kher, Advocate.

versus

SHARMA ASSOCIATES AND ORS BA+ Defendants
Through: Mr. Lalit Bhardwaj, Advocate for D-4.
Mr. Nalin Tripathi, Advocate for D-1-3.

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | Yes. |
| 2. | To be referred to Reporter or not? | Yes. |
| 3. | Whether the judgment should be reported in the Digest? | Yes. |

MR. JUSTICE S.RAVINDRA BHAT

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1. This order deals with the objection as to the maintainability of the Suit, raised by the defendants. The matter was heard on 22.12.2009 when the Court indicated that the orders would be passed today.

2. The plaintiffs seek a decree for cancellation of an Agreement cum Partnership deed, dated 18.11.1987, said to have been executed between the first defendant and one late Manoj Kumar in respect of the land being Khasra No. 597 and 600, ("the suit lands") Revenue estate Village Devli, Tehsil Mehrauli, New Delhi and a declaration that such document was executed without authority and, therefore, null and void. A consequential decree for declaration, that the plaintiffs are in possession of the suit lands, as well as for a decree for permanent injunction, in

respect of the said land and the documents is also sought.

3. The plaintiffs claim to be owners of the suit lands measuring 8 Bighas and 11 biswas. It is stated that first defendant is a purported partnership concern, the composition of which is not known, but according to the Suit, the Defendant Nos.2 & 3 are its partners. The plaintiffs contend that Mange, Rattan Singh and Surjee are sons of Ghisha, resident of Village Devli and were owners of the suit land, but on 13.2.1980 sold 1 Bigha and 16 biswas of land comprising of khasra No. 597 to the Plaintiff Nos.1-3 through a registered sale deed and that such previous owners has also delivered peaceful vacant possession of such land. It is also stated that with regard to Khasra No. 600, the said three persons were joint owners of 3200 sq. yds. of which Mange sold his land i.e. 1067 sq. yds. to the fourth plaintiff and his sister. Similarly, state the plaintiffs, an identical parcel of land was sold to Mr. Rattan Chand and Smt. Chander Prabha, the first plaintiff's wife. Surjee sold 1067 sq. yds. of land to the fifth plaintiff and his sister Shashi Bala. It is stated that the plaintiffs, for the purpose of effective management of the properties constructed two rooms upon it and employed one Shyam Mishra to look after it; he was residing there. The plaintiffs rely upon registered sale deeds dated 13.2.1980. In these circumstances, say the plaintiffs, one Manoj Kumar approached them in January, 1987 to purchase the suit land. The plaintiffs refer to an agreement to sell dated 19.1.1987 with the said vendee, who is now deceased, for selling their respective share of the suit properties for a total consideration of Rs.16,25,000/-, of which an advance of Rs.1,50,000/- was paid. The plaintiffs say that possession of the land was to be handed over and that in case the vendee failed to pay the balance consideration by 15.04.1987 to them, the advance was to be forfeited.

4. The plaintiffs rely upon the stipulations in the said agreement to sell, which are as follows: -

“1. The cost of the above mentioned property/land has been fixed Rs.325/- (Rupees three hundred twenty five) per sq. yds. for which the first party has received a sum of Rs.1,25,000/- (Rupees one lakh twenty five thousand) and Rs.25,000/- (Rupees twenty five thousand) under separate receipts referred to above out of the total amount of Rs.16,25,000/- (Rupees Sixteen lakhs twenty five thousand) ad advance earnest money from the second party against the consideration of the said property.

2. That the balance payment of Rs.14,75,000/- (Rupees fourteen lakhs seventy five thousand only) shall be paid by the second party on or before the 15th April, 1987.

3. That the first party will be delivered the vacant and actual possession of the said land to the Second Party at the time of execution of General Power of Attorney after receive the full and final payment.

4. That all the expenses of the said deed shall be borne by the Second Party.

5. That all the taxes, levies and other expenses in respect of the said land up to the date of execution of this agreement shall be paid by the first party and thereafter the same shall be paid by the Second Party.

6. That the first party hereby assure to the vendee/second party that the said lands is not transferred or sold in the previous time to this agreement to any other third party and the said land is not under hypothecation and the same is free from mortgage, lien, decree etc. etc.

7. That the first party also hereby assure to the second party if any dispute whatsoever found against the said land upto the possession, in that case the second party shall not be held be responsible for the same.

8. That the Second Party has every right to get the same mutated or transferred in his own name or in the name of any other person.

9. That if the second party fails to pay full and final payment within the stipulated period in that case the amount paid by the second party in advance referred to above shall be forfeited and in case the first party does not fulfill the terms by delivery the possession in that case the first party shall pay the double of the advance so received by the first party referred to above.”

It is alleged that the vendee deceased Manoj Kumar did not fulfill his part of the obligation; consequently, the advance paid was forfeited and automatically, the Agreement to sell stood cancelled. The plaintiffs' claim is that the said vendee Manoj Kumar without any right, title or

interest in the said property and despite failure of the agreement, had entered into a partnership arrangement/agreement with the firm M/s Sharma Associates on 18.11.1987 concerning the suit property itself. A copy of the said document (hereafter called “the partnership deed”) has been produced.

5. It is stated that the said firm i.e. the first defendant was an unregistered one and not a legal entity at the time of execution of the partnership deed. The plaintiffs allege that the vendee Manoj Kumar was incapable of entering into such partnership transaction as he did not pay the balance amount of Rs.14.75 Lakhs in terms of the Agreement to Sell, entered into with them, dated 19.1.1987.

6. It is stated that the first defendant firm acting through Defendant Nos.2-4 started claiming possession in respect of the suit property and attempted to take forcible possession of the lands, on the basis of the partnership deed which led to lodging of a police complaint on 7.4.1988 by the plaintiffs. It is alleged that again a similar incident occurred on 12.4.1988 and that on 25.4.1988, the fourth defendant threatened the plaintiffs to take over forcible physical possession of the suit property, which led to their instituting proceedings under Section 145 Cr.P.C. The plaintiffs, importantly refer to first defendant instituting a suit for permanent injunction on 13.6.1988 being Suit No.384/1988 whereby they claimed to be in possession of the suit lands on the basis of the partnership deed and sought for an injunction.

7. The plaintiffs also refer to a Local Commissioner’s report – allegedly obtained in connivance with the defendants and in their (the plaintiffs’) absence, in the said suit. It is stated that the plaintiffs too instituted a suit for permanent injunction in respect of the part of the suit property, Khasra No. 597 against Manoj Kumar and others which included the four defendants, being Suit No. 194/1988. In those proceedings, the defendants filed a common written statement.

The suit averments further show that the Sub Divisional Magistrate by an order dated 30.08.1988, in the Section 145 proceedings, directed sealing of the suit property; the first defendant, feeling aggrieved, preferred a revision proceedings against that order.

8. The plaintiffs further state that they had sought for rejection of the suit filed by the first defendant; the latter had moved an application in 1999 for withdrawal of the proceedings. It is stated that the first defendant later instituted another suit, registered as Suit No. 75/2000 in which reliefs similar to those claimed in Suit No. 384/1988 were sought. The suit averments also disclose that the revisional court i.e. the Additional Sessions Judge on 6.11.2001 set aside the order of the SDM and remitted the case for reconsideration, under Section 145, Criminal Procedure Code, without deciding the question of possession. The plaintiffs further refer to another incident of alleged threat which led to filing of a First Information Report (FIR) which was eventually quashed by the Supreme Court on the ground that civil proceedings, concerning disputes regarding possession of the lands were pending. It is stated that subsequently in May, 2004, the plaintiffs again filed another proceedings under Section 145 which too was dismissed.

9. In respect of the cause of action alleged in the present suit, the plaintiffs contend as follows: -

“That the cause of action arose for the first time on 19.01.1987 when the plaintiffs entered into the Agreement to Sell with one Shri Manoj Kumar for sale of the suit property. The cause of action also arose on 15th April, 1987 when Shri Manoj Kumar failed to pay the balance consideration amount and the Agreement stood cancelled. The cause of action also arose on 18.11.1987 when Shri Manoj Kumar (now deceased) alleged entered into Agreement-cum-Partnership with the Defendant No.1. The cause of action also arose on various dates when the suit bearing No.384/88 was filed by the Defendant No.1 against the plaintiff. The cause of action also arose when Suit No.75/2000 was filed by the Defendant No.1. The cause of action also arose when the plaintiff filed a suit for injunction with respect to part of the suit property. The cause of action also arose when proceedings under Section 145 Cr.P.C. were initiated. The cause of action also arose on various dates when the police

complaint was lodged by the plaintiff and its culmination into various proceedings, which are pending in various Courts. The cause of action also arose on various dates when orders were passed by the various Courts as per details given in the Complaint. The cause of action still continues as all the suits and the proceedings are still pending. The cause of action also arose on different dates in the month of August, 2005 when it has come to the notice of the plaintiffs that the defendants are trying to create third party interest with respect to the suit property. The cause of action still continues as the defendants are misusing the alleged Agreement-cum-Partnership dated 18th November, 1987 and are continuing to do so. The cause of action continues. The cause of action further arose on subsequent dates when the said Agreement cum Partnership Deed dated 18th November, 1987 was intended and/or is used by the defendants to assert their right in respect of the suit property to the detriment of the right, title or interest of the plaintiffs, who are the owners of the suit property. The cause of action is still subsisting.”

10. The defendants, at the threshold contend that the Suit is liable to be dismissed as barred in law for more reasons than one. They contend that the alleged cause of action as stated in the Suit occurred in the year 1987. It is contended by them through the counsel that in any event, the institution of a suit by the plaintiffs as well as the institution of the Suit by the defendants i.e. Suit No. 384/1988 and the subsequent Suit No. 75/2000 amply clarify that the plaintiffs were well aware about the foundation for their (the defendants) claim to be in possession of the suit property i.e. partnership deed dated 18.11.1987. The best case of the plaintiffs, say the defendants, would be that they became aware about the hostility of title against them when they were served with summons in the Suit no. 384/1988. Thus, the period of limitation is reckonable thenceforth. The suit is, therefore, hopelessly time barred. It is submitted that what is material for the Court is to read the plaint as a whole to deduce whether the cause of action can justifiably sustain a valid action capable of trial.

11. Learned counsel emphasized that the pleadings in the pending suits are a matter of record; they clearly disclose that the plaintiffs not only were aware of the suit claim of the defendants, but also chose to file another suit in the civil court on 30.06.1988 but in respect of

Khasra no. 597. In these circumstances, the claim for cancellation or declaration is time barred as the last date expired sometime in 1991. As far as the claim for possession is concerned, submit the defendants, even that relief is unavailable because the period of 12 years expired sometimes in 1999-2000.

12. It is stated that in any event, the plaintiffs have disclosed and also filed a copy of the suit instituted by them in 1988, which is still pending. That clearly discloses their grievance. Secondly, the plaintiffs chose not to seek any relief of cancellation or possession in respect of all the suit properties. Indeed, the plaintiffs did not even make any averments with regard to khasra No. 600. Therefore, the bar to maintainability under Order-2, Rule-2 clearly applies.

13. It is submitted that the repeated attempts by the plaintiffs to somehow grab *ex parte* orders or directions from revenue authorities have been unsuccessful; so much so, the Section-145 proceedings have not resulted in any successful order in their favour for more than 20 years. Likewise, say the defendants, the attempt to file false cases upon them by filing FIRs has not met with success as such complaints have been quashed. In the circumstances, allowing the present suit to continue would amount to travesty of justice as the plaintiffs would unfairly prolong the proceedings, thus harassing the defendants.

14. It is submitted that in the Suit filed by the defendants (Suit No. 384/1988), the Local Commissioner visited the premises and ascertained that in fact possession was with them (the defendants). That Commissioner's report has not been challenged or contradicted by the plaintiffs till date. In the circumstances, the entire case of the plaintiffs is based on frivolous and false pleas and deserves to be rejected.

15. It is evident from the above narrative that the plaintiffs are claiming to be owners of the suit lands measuring more than 8 bighas; they concededly entered into an agreement to sell with

one Manoj Kumar (now deceased) sometime in January, 1987. They alleged that the entire consideration was not paid for the said lands; consequently, the agreement to sell stood cancelled and the advance sum paid forfeited. The suit filed by the plaintiffs as well as two suits filed by the defendants are a matter of record in this case.

16. In Civil Suit No. 384/1988, the plaintiff (i.e. the defendant No.1) had impleaded the present plaintiff as the first defendant. The suit clearly mentions about the partnership deed dated 18.11.1987 in respect of both Khasra Nos. 597 & 600 as the basis for claiming possession. The said suit also impleads the late Manoj Kumar and mentions about the agreement entered into by him with the present plaintiffs. In Civil Suit No. 194/1988, three of the present plaintiffs are parties; they impleaded the defendants as well as the late Manoj Kumar, mention about the agreement to sell entered into on 19.01.1987 and sought for permanent injunction against all the defendants. Significantly, this Suit was filed on 30.06.1988, the same year in which the defendants' suit was filed; what is more, the suit confines the reliefs in respect of khasra No. 597. The complaint made under Section-145 CrPC on 14.09.1988 also seeks reliefs in respect of both the khasra numbers and mentions them specifically in the very first paragraph. This complaint was instituted on 25.04.1988.

17. It is evident from the above materials that the plaintiffs were aware and in any event deemed to have been aware of the defendants' possession regarding the suit property and the basis of their claim for possession, i.e., the partnership deed dated 18.11.1987 sometime during that year or at best sometime in 1988 - at the latest on 30.06.1988 when they filed the suit i.e. CS (OS) 194/1988. Articles 58 & 59, of the Schedule, to the Limitation Act prescribe the period of limitation in respect of the relief of declaration; it is three years from the date of accrual of the cause of action. Even if the Courts have to take a liberal and charitable view about the plaintiffs'

knowledge having been acquired after the Suit filed by the defendants, their best case would be awareness sometime in the year 1988. If that were the starting point of the period of limitation, clearly the three year period ends sometime in 1991. That the plaintiffs were pursuing concurrent remedies in respect of the same suit property with this awareness is also evident from the copies of the complaint under Section-145 filed by them. Therefore, the Suit is clearly time barred as far as the relief of declaration claimed is concerned.

18. As far as the relief of possession is concerned, here too, the plaintiffs could have either sought that relief in any of the pending proceedings or even sought to counter claim for that relief in the suits pending before the Civil Court and the District Judge. They chose not to do so at any point of time. If the starting point of limitation were to be reckoned from 1988 onwards, clearly the relief of possession also stood barred in view of the Limitation Act - Article 65 sometime in 1999-2000.

19. The Court also finds as substantial the defendants' arguments regarding maintainability of the Suit on the ground that no leave was sought from the trial court, which the plaintiffs have approached for the relief by filing the Civil Suit No. 194/1998. The provisions of Order-2, Rule-2, CPC compel a litigant or a suitor who seeks relief from the Court to also ask for grant of all such reliefs as he can, on the basis of the entire subsisting cause of action - as on the date of his approaching the Court – to avoid multifariousness. If that is not possible, he has to seek leave, in the absence of which he is barred from instituting a fresh suit, in respect of such causes. In the present case, the plaintiffs' knowledge about the partnership deed dated 18.11.1987 and the awareness of the defendants' claim to be in legal possession, has to be seen in totality as conferring cause for the plaintiffs to approach the Court. They deliberately chose only to file a suit for injunction without seeking declaratory reliefs or decree for possession as is now urged in

the present suit. In the opinion of this Court, provisions of Order-2, Rule-2 CPC clearly bars them from seeking such relief.

20. It has been held more than 30 years ago by the Supreme Court in *T. Arivanandam v. T. Satyapal*, AIR 1977 SC 2421 that if on a meaningful, -not formal- reading of the plaint it is manifestly found to be vexatious and meritless, in the sense of not disclosing a right to sue, the judge should exercise his power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. The same principles were been re-iterated in *I.T.C. Ltd. V. Debts Recovery Appellate Tribunal*, AIR 1988 SC 634, in the following terms:

“Question is whether a real cause of action has been set out in the Plaint or something purely illusory has been stated with the view to get out of Order 7 Rule 11 CPC. Clever drafting creating illusions are not permitted in law and a clear right to sue should be shown in the plaint.”

Thus, the Court should always be vigilant for scrutinizing the pleadings and materials placed before it to ascertain whether the litigation is frivolous or maintainable at all. The Supreme Court also observed that the Court must exercise its powers under CPC at every appropriate stage in order to nip frivolous cases or those which are clearly barred in law.

21. In view of the above discussion, this Court is of the opinion that the present Suit is not maintainable; it is accordingly rejected. All pending applications are also dismissed. In the circumstances, the plaintiffs shall also bear the cost of the proceedings quantified @ Rs.50,000/- (Rs. Fifty thousand), to be paid to defendants in 4 weeks.

S. RAVINDRA BHAT, J

FEBRUARY 02, 2010
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