

Sri Biswanath Banik vs Sulanga Bose on 14 March, 2022

Author: M.R. Shah

Bench: B.V. Nagarathna, M.R. Shah

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1848 OF 2022

Sri Biswanath Banik & Anr.

...Appellant(s)

Versus

Smt. Sulanga Bose & Ors.

...Respondent(s)

JUDGMENT

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Calcutta in C.O. No. 1417 of 2017 by which the High Court has allowed the said petition and has quashed and set aside the order passed by the trial court refusing to reject the plaint in exercise of powers under Order VII Rule 11 of Code of Civil Procedure, 1908 (CPC) and consequently has rejected the plaint under Order VII Rule 11 CPC mainly on the ground that the suit is barred by limitation and that a suit for a declaration simpliciter under Section 53A of the Transfer of Property Act would not be maintainable as against the actual owner, the original plaintiffs have preferred the present appeal.

2. The facts leading to the present appeal in nutshell are as under:-

2.1 That the respondents herein – original plaintiffs had instituted a Title Suit No. 166 of 2010 against the respondents herein (original defendants) in the Court of Civil Judge, Sr. Division, Sealdah. The plaintiffs in the suit prayed for the following reliefs:-

“a) For declaration of right, title interest in the suit property and for confirmation of plaintiff's possession as part performance of contract dated 28.4.1995 as provided under Section 53A of the T.P. Act.

aa) for enforcement of the agreement dated 28.4.1995 directing the Principal defendant to execute and register Deed of conveyance in favour of the plaintiffs;

b) For a decree for permanent order of injunction restraining the aforesaid defendant and his men and agent from causing any interference and/or any obstruction to the peaceful enjoyment and possession of the suit property and further restraining the defendant from making any attempt to dispossess the plaintiffs forcefully and illegally from the suit property;

c) For temporary injunction with ad-interim Rule on similar effect in terms of prayer (b);

xxxxxxx” 2.2 Having served with the suit notice, the defendants submitted an application before the trial court requesting to reject the plaint under Order VII Rule 11 CPC mainly on the ground that the suit is barred by limitation and that the suit for a declaration simpliciter under Section 53A of the Transfer of Property Act would not be maintainable. That the trial court rejected the said application and refused to reject the plaint in exercise of powers under Order VII Rule 11 CPC.

2.3 Feeling aggrieved and dissatisfied with the order passed by the trial court refusing to reject the plaint under Order VII Rule 11 CPC, the original defendants preferred revision application/application before the High Court. By the impugned judgment and order, the High Court has quashed and set aside the order passed by the trial court and consequently has allowed the application under Order VII Rule 11 CPC and has rejected the plaint on the ground that the suit is barred by limitation and that the suit for a declaration simpliciter under Section 53A of the Transfer of Property Act would not be maintainable against the actual owner.

2.4 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court allowing the application under Order VII Rule 11 CPC and rejecting the plaint on the ground that the suit is barred by limitation as well as the suit for a declaration simpliciter under Section 53A of the Transfer of Property Act would not be maintainable against the original owner, the original plaintiffs have preferred the present appeal.

3. Shri Ankur Sood, learned counsel appearing on behalf of the appellants has vehemently submitted that in the facts and circumstances of the case, the High Court has erred in allowing the application under Order VII Rule 11 CPC and rejecting the plaint on the ground that the suit is barred by limitation. It is submitted that while holding that the suit would be barred by limitation, the High Court has not at all considered the entire suit averments and has not considered the averments in the plaint as a whole.

3.1 It is contended that as per the averments in the plaint, the cause of action had arisen on 10.08.2010 / 24.08.2010 on which date the advertisement was given in the newspapers with an intent to transfer the property by a third party. It is submitted that as such in the facts and circumstances of the case, it can be said that the issue with respect to limitation is a mixed question of law and facts and therefore, the High Court ought not to have rejected the plaint on the ground that it is barred by limitation.

3.2 It is further submitted that the High Court has not at all properly appreciated the fact that the plaintiffs claimed the relief in the suit invoking Section 53A of the Transfer of Property Act and also prayed for the relief of permanent injunction. It is urged that whether the plaintiffs would succeed in getting the relief/reliefs under Section 53A of the Transfer of Property Act would have to be considered at the time of trial. It is submitted that however, it cannot be said that a suit for declaration under Section 53A of the Transfer of Property Act would not be maintainable at all.

3.3 Making above submissions and relying upon the decision of this Court in the case of Ram Prakash Gupta Vs. Rajiv Kumar Gupta and Ors., (2007) 10 SCC 59, it is vehemently submitted that in the present case, the High Court has exceeded its jurisdiction to reject the plaint under Order VII Rule 11 CPC.

4. Shri Suman Kumar Dutt, learned counsel appearing on behalf of the original defendants has supported the impugned judgment and order passed by the High Court.

4.1 It is submitted that in the facts and circumstances of the case, the High Court has not committed any error in rejecting the plaint on the ground that the suit is barred by limitation. It is contended that even according to the plaintiffs the cause of action had arisen in the year 2004 as averred in paragraph 4 of the plaint. It is submitted that therefore when the cause of action had arisen in the month of April / May, 2004 and when the suit was filed in the year 2010, the same is clearly barred by law of limitation. It is submitted that when once the suit was barred by limitation, the same is liable to be rejected under Order VII Rule 11(d) of CPC.

4.2 Relying upon the decision of this Court in the case of Delhi Motor Company Vs. U.A. Basrurkar, AIR 1968 SC 794 in which this Court relied upon the Privy Council judgment, it is submitted that the suit for a declaration simpliciter under Section 53A of the Transfer of Property Act would not be maintainable. It is urged that the High Court has not committed any error in allowing the application under Order VII Rule 11 CPC and in rejecting the plaint.

5. We have heard the learned counsel appearing on behalf of the respective parties at length.

6. At the outset, it is required to be noted that the trial court rejected the application under Order VII Rule 11 CPC and refused to reject the plaint. However, the High Court by the impugned judgment and order has set aside the order passed by the trial court and allowed the application under Order VII Rule 11 CPC and has rejected the plaint on the ground that the suit is barred by limitation as well as the suit for a declaration simpliciter under Section 53A of the Transfer of Property Act would not be maintainable.

7. Now, so far as the issue whether the suit can be said to be barred by limitation or not, at this stage, what is required to be considered is the averments in the plaint. Only in a case where on the face of it, it is seen that the suit is barred by limitation, then and then only a plaint can be rejected under Order VII Rule 11(d) CPC on the ground of limitation. At this stage what is required to be considered is the averments in the plaint. For the aforesaid purpose, the Court has to consider and read the averments in the plaint as a whole. As observed and held by this Court in the case of Ram Prakash

Gupta (supra), rejection of a plaint under Order VII Rule 11(d) CPC by reading only few lines and passages and ignoring the other relevant parts of the plaint is impermissible. In the said decision, in paragraph 21, it is observed and held as under:-

“21. As observed earlier, before passing an order in an application filed for rejection of the plaint under Order 7 Rule 11(d), it is but proper to verify the entire plaint averments. The abovementioned materials clearly show that the decree passed in Suit No. 183 of 1974 came to the knowledge of the plaintiff in the year 1986, when Suit No. 424 of 1989 titled Assema Architect v. Ram Prakash was filed in which a copy of the earlier decree was placed on record and thereafter he took steps at the earliest and filed the suit for declaration and in the alternative for possession. It is not in dispute that as per Article 59 of the Limitation Act, 1963, a suit ought to have been filed within a period of three years from the date of the knowledge. The knowledge mentioned in the plaint cannot be termed as inadequate and incomplete as observed by the High Court. While deciding the application under Order 7 Rule 11, few lines or passage should not be read in isolation and the pleadings have to be read as a whole to ascertain its true import. We are of the view that both the trial court as well as the High Court failed to advert to the relevant averments as stated in the plaint.” 7.1 From the aforesaid decision and even otherwise as held by this Court in a catena of decisions, while considering an application under Order VII Rule 11 CPC, the Court has to go through the entire plaint averments and cannot reject the plaint by reading only few lines/passages and ignoring the other relevant parts of the plaint.

7.2 Applying the law laid down by this Court in the case of Ram Prakash Gupta (supra) to the facts of the case on hand and on going through the entire plaint averments, it cannot be said at this stage that the suit is barred by limitation on the face of it. The necessary averments in the plaint on the cause of action are in paragraphs 6, 7 and 10, which read as under:-

“6. That the aforesaid defendant now consequent upon the escalation of the land value of the area has been more aggrieved to drive out the plaintiffs from the suit property by hook and crook and various insertion in the newspapers dated 10.8.2010, 24.8.2010 at the Ananda Bazar Patrika and on 22.8.2010 at The Telegraph, coming up from the different parts with intent to purchase and get transfer of the property by the third party.

7. That the aforesaid defendant and his men and agent concretely on 29.8.2010 tried to forcefully enter into the suit property and manhandle the "Durwan" but owing to the resistance the defendant did not succeed in their attempt to dispossess, but defendant with his associate is determined to dispossess the plaintiffs from his lawful possession by any means even by using force and violence. That the proforma defendants have made parties in the suit without any claim against them but for proper adjudication of the said matter.

10. That the cause of action for this suit arose on 29.08.2010 at Premises No. 3/3A, formerly 3, Gurudas Dutta Garden Lane, P.S. Ultadanga, Kolkata- 700067, which is within the jurisdiction of this Ld. Court.” 7.3 In the present case, while holding that the suit is barred by limitation, the High Court has considered only the averments made in paragraph 4 and has not considered the entire plaint averments.

7.4 While rejecting the plaint, the High Court has also observed and held that the suit for a declaration simpliciter under Section 53A of the Transfer of Property Act against the original owner would not be maintainable and for that reliance is placed upon the decision of this Court in the case of Delhi Motor Company (supra). However, it is required to be noted that even the plaintiffs have also prayed for the decree for a permanent injunction claiming to be in possession and the declaration and permanent injunction as such invoking Section 53A of the Transfer of Property Act. When the suit is for a decree of permanent injunction and it is averred that the plaintiffs are in possession of the suit property pursuant to the agreement and thereafter, they have developed the land and that they are in continuous possession since more than twelve years and they are also paying taxes to the Corporation, the cause of action can be said to have arisen on the date on which the possession is sought to be disturbed. If that be so, the suit for decree for permanent injunction cannot be said to be barred by limitation. It is the settled proposition of law that the plaint cannot be rejected partially.

Even otherwise, the reliefs sought are interconnected. Whether the plaintiffs shall be entitled to any relief under Section 53A of the Transfer of Property Act or not has to be considered at the time of trial, but at this stage it cannot be said that the suit for the relief sought under Section 53A would not be maintainable at all and therefore the plaint is liable to be rejected in exercise of powers under Order VII Rule 11 CPC.

8. In view of the above and for the reasons stated above, the High Court has committed a grave error in allowing the application under Order VII Rule 11 CPC and rejecting the plaint. The High Court has exceeded in its jurisdiction in rejecting the plaint while exercising the powers under Order VII Rule 11 CPC. The impugned judgment and order passed by the High Court is unsustainable both, on law as well as on facts.

9. For the reasons stated hereinabove, the present appeal succeeds. The impugned judgment and order passed by the High Court allowing the C.O. and quashing and setting aside the order passed by the trial court refusing to reject the plaint under Order VII Rule 11 CPC and consequently rejecting the plaint under Order VII Rule 11 CPC is hereby quashed and set aside. The application submitted by the original defendants to reject the plaint under Order VII Rule 11 CPC stands dismissed. The order passed by the trial court stands restored. Now, the trial to proceed further in accordance with law and on its own merits. However, it is observed that whatever observations are made by this Court in the present order shall be confined to deciding the application under Order VII Rule 11 CPC only and the trial court to finally decide and dispose of the suit in accordance with law and on its own merits and on the basis of the evidence led.

Present appeal is allowed accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs.

..... J.
[M.R. SHAH]

NEW DELHI;
MARCH 14, 2022.

..... J.
[B.V. NAGARATHNA]