

Sh. Tilak Raj Luthra vs Sh. Yameen Hayat Begum on 5 July, 2010

In the court of Sh. Devender Kumar CCJ/ARC (N/E),
Karkardooma Courts Delhi.

UNIQUE I.D. NO.
CIVIL SUIT NO.584/09

IN THE MATTER OF :
SH. TILAK RAJ LUTHRA
S/O SH. RAM CHAND LUTHRA
R/O H. NO. 5451, GANDHI MARKET,
SADAR BAZAR, DELHI

PLAINTIFF

Versus

SH. YAMEEN HAYAT BEGUM
S/O HAJI ALLAUDDIN
R/O 12-A/16, GALI NO. 16,
VIJAY MOHALLA, MOUJPUR,
SHAHDARA, DELHI

DEFENDANT

Date of Institution of the Suit	:	23-08-04
Arguments Heard	:	05-07-10
Date of Judgment	:	05-07-10

SUIT FOR PERMANENT INJUNCTION

Judgment:

1.

Vide this judgment, I shall dispose off a suit for permanent injunction filed by the plaintiff against the defendant. The brief facts of the case are as under :

2. Plaintiff has alleged that the defendant was the owner of the suit property bearing no. 12/14G, Vijay Mohalla, Gali No. 8, Village Maujpur Illaqa Shahdara, Delhi 32 by the virtue of documents GPA, Agreement to sell, Receipt Will etc. It is further alleged that the defendant was in need of money due to she approached to the plaintiff for a loan of Rs. 3 lacs and mortgaged the property as security and the loan was advanced on 04.05.98 and it was repayable by the defendants on or before 03.10.98. It is further alleged that the loan agreement was executed between the parties, but the defendant failed to refund the loan amount and even interest was also not paid. It is further alleged that the defendant is under obligation to pay the amount, but after not paying the amount, defendant has no right in the suit property, but she is trying to create third party interest in the suit property without repaying the loan amount. It is further alleged that on 11.08.04, plaintiff came to know that the defendant is trying to sell out the suit property.

By the way of present suit, plaintiff has prayed that the defendant be restrained from selling, or

creating the third party interest in the suit property.

3. Defendant has filed WS and has alleged that the suit is not maintainable as the plaintiff has suppressed the material facts as a person namely Smt. Yamin Hayat is not a person who is residing at the given address and even she is not dealing with the plaintiff nor premises belong to her. It is further alleged that the plaintiff has no locus standi to file this suit as he has no interest as well as cause of action in his favor. It is further alleged that suit has not been properly valued for the purpose of court fees and jurisdiction and suit is also barred by limitation. It is further alleged that suit has been filed without site plan. It is denied that the defendant ever approached to the plaintiff for a loan of Rs. 3 lacs or ever pledged her property with the plaintiff. It is further alleged that the defendant is poor and illiterate lady who has been cheated by the plaintiff. It is further alleged that the plaintiff used to visit the house of the defendant as they were having business relations and on the wrong pretext, the plaintiff got certain blank documents signed from the defendant for the purpose of Income Tax and Sale Tax and those documents have been misused by the plaintiff. It is further alleged that defendant was supplying various types of toys to the plaintiff and plaintiff used to give the amount to the defendant and the plaintiff has paid total amount of Rs. 2,50,000/- and defendant has already supplied the material so there is no question of giving loan to the defendant by the plaintiff. It is further alleged that the plaintiff has manipulated entire story and has filed false suit which is liable to be dismissed.

4. As per the pleadings of the parties, following issues were framed vide order dated 19/11/05.

ISSUES:

1. Whether the plaintiff has no locus standi to file the present suit against the defendant ?

OPD

2. Whether the suit is not properly valued for the purpose of court fees and jurisdiction ?

OPD

3. Whether the suit is barred by limitation ? OPP

4. Whether the plaintiff has concealed the material facts from the court and has not come to the court with clean hands ? OPD

5. Whether the plaintiff is entitled for the relief of permanent injunction as prayed for in the plaint ? OPP

6. Relief

5. To prove the case, plaintiff has examined himself as PW1 and has deposed in his examination in chief in verbatim to the plaint and has relied upon the loan agreement which is Ex. PW1/1.

6. PW1 has been cross examined and during cross examination, he has deposed that he is doing the business of Toys, Rakhi, Pitchkari and general items since 1983. It is further deposed that he is income tax payee since 1984/85 and has filed return up to the year 1998-99. It is further deposed that he has not shown Rs. 3 lacs given as loan to the defendant in his income tax return for the assessing year 1998-99 and the amount was paid in cash. It is further deposed that he has not got executed any money receipt or any document except Ex. PW1/1. It is further deposed that some of amount paid to the defendant was lying with him and some amount was borrowed from his friend, but he does not remember the name of the friend. It is further deposed that he has not reflected cash in hand in his account or income tax return as it was not required. It is further deposed that he can produce the income tax return for the year 1998-99, but he does not want to produce his ITR. It is further deposed that he was not aware whether cash more than Rs. 20,000/- cannot be paid without showing ITR. It is further deposed that he know the defendant for the last 16-17 years as he used to supply pitchkari, toys and Diwali gun to him against receipts and he usually take the original receipt from the defendant after payment. It is denied that he has not given any loan of Rs. 3 lacs to the defendant. It is further deposed that the loan was given on 04/05 in the year 1998 which was to be repaid in five months. It is further deposed that he has not issued any legal notice to the defendant to repay the amount and he never demanded the amount by the way of legal notice. It is further deposed that he cannot tell whether receipts Ex. PW1/X1 to PW1/X4 were issued by him or belong to him. It is further deposed that he has paid the entire bills of the defendant. It is further deposed that he cannot tell whether the value of receipts Ex. PW1/X1 to X10 is Rs. 6,19,000/- but it is denied that he has not made the payment against the receipts and has filed this suit just to avoid the payment. It is further deposed that he has never visited the house of the defendant many times and does not know the address of the defendant. It is further deposed that Ex. PW1/1 is witnessed by Sh. Amir Chand who is his employee and Jamiluddin who used to supply the materials to him. It is further deposed that he does not remember whether Sh Jamiluddin has supplied any material to him on 04.05.98. It is further deposed that he has visited to his shop on 04-05-98 for supply of the materials. It is further deposed that he has no record to show any transaction dated 04.05.98 as no such record is maintained and thereafter opportunity of the plaintiff to further cross examine the witness was closed.

The defendant has not examined any witness and DE was closed on 02.02.10.

7. I have heard the arguments and perused the record. My issue wise findings are as under :

The onus to prove these issues was fixed upon the defendant, but defendant has not examined any witness to discharge the onus, however, the defendant has cross examined PW1 who is the sole witness examined in this case. Perusal of the testimony of PW shows that it was not suggested to the plaintiff during the entire cross examination, in what manner, he has no locus standi to file this case or why this suit has not been properly valued for the purpose of court fees and jurisdiction. Present suit is for permanent injunction and as per section 7 (iv) (d) of Court Fees Act, 1870,

the valuation of the suit done by the plaintiff is appropriate valuation for the purpose of court fees and jurisdiction and the same has been done. The defendant in the entire cross examination has not disclosed in what manner the plaintiff has concealed the material facts except putting one or two suggestions that the plaintiff has mischievously used certain blank documents of the defendant which were obtained during the business transaction. Besides it, it has not been suggested or explained, in what manner, concealment of material facts has been done by the plaintiff or in what manner the plaintiff has not approached the court with clean hands. The defendant has nowhere denied that his name is not Yamin Hayat or he did not enter in to the agreement which is Ex. PW1/1. If the name and documents are not denied by the defendant, then the defendant cannot challenge the locus standi of the plaintiff to file the present suit. As such, the defendant has failed to discharge the onus to prove these issues and issues are decided in favor of plaintiff and against the defendant.

The onus to prove the issue was fixed upon the plaintiff, however the language of the issue shows that the onus should be on the defendant as it is the plea of the defendant that the suit is barred by limitation and issue is being taken up accordingly. Defendant has taken this plea that the suit is barred by limitation. Counsel for defendant has submitted that the loan was allegedly taken on 04.05.98, whereas the limitation for recovery of the loan amount is three years and suit has been filed on 23.08.04 and the same is barred by limitation. On the other hand, counsel for plaintiff has submitted that the present suit is not suit for recovery due to this plea cannot be taken by the defendant and the objection taken by the defendant is of no use.

I have heard the arguments and perused the record. Though it is not disputed proposition that the recovery of amount may be done within the period of three years which is the limitation prescribed by the Limitation Act, but it is a suit for permanent injunction arising out of loan agreement and limitation does not attract in the permanent injunction. I have gone through the loan agreement Ex. PW1/1. As per the Ex. PW1/1, the period of the loan was five months up to 03.01.98 and the recovery of the amount was to be done after five months and it was a condition that the lender will remain free to recover his all the dues from the said property of the borrower and in case of any shortfall, from the remaining property of the borrower. Language of the agreement shows that only three lacs amount was to be recovered from the property of the defendant which was kept as security and it was nowhere mentioned that the entire property was to be adjusted by the plaintiff against the loan. Due to the limitation, the amount could have not been recovered by the plaintiff from the defendant, due to defendant has taken this plea and suit for permanent injunction filed before this court just to get the time barred loan amount from the defendant. The plaintiff in para 8 of the plaint has only alleged that on 11.04.08, the plaintiff came to know about the illegal plans and designs of the defendant that he is going to sell out the suit property, whereas from 03.10.98 to 03.08.04, he did not take any steps to recover the amount or to sell out the suit property.

Though no specific limitation has been prescribed for permanent injunction, yet loan agreement connected with the permanent injunction and Ex. PW1/1 make it clear that the time barred debt has been sought to be recovered by the way of this injunction and the same shall be considered as barred by limitation.

9. Besides it, the loan agreement which is of Rs. 3 lacs was ought to be registered U/s 17 (1) (b) of the Registration Act and the same is not registered and cannot be read in to the evidence as per section 49 of Registration Act. Perusal of the loan agreement shows that the revenue receipt of Rs. one has been affixed and signed by borrower which suggest that it is just a receipt of the amount and no agreement. As such, this agreement only may be considered for collateral purpose and not beyond it. As such, the defendant has discharged the onus to prove this issue and this issue is decided in favor of defendant and against the plaintiff.

The onus to prove this issue was fixed upon the plaintiff and to discharge the onus, plaintiff has examined himself as PW1. I have heard the arguments and gone through the record. Counsel for plaintiff has submitted that the defendant borrowed a sum of Rs. 3 lacs from the plaintiff and mortgaged his property as security with the plaintiff by the way of loan agreement Ex. PW1/1. It is further submitted that the defendant failed to make the payment and after failure of the defendant to make the payment, the plaintiff has got lian over the property, but the defendant is trying to sell out the suit property. It is further submitted that as per section 38 of the Specific Relief Act, the obligation has been created in the suit property and the defendant has no obligation to deal with the property of the plaintiff who has acquired the title of the property after failure of the defendant to repay the loan amount. It is further submitted that after becoming the owner of the suit property after lapse of period of five months, the plaintiff has got rights towards the suit property. It is further submitted that the defendant cannot sell out the suit property without paying the amount of the plaintiff and as such, the defendant has left with no right in the suit property. In support of the arguments, Ld. Counsel for the plaintiff has relied upon in AIR 1976 Gujrat 154 titled Keshavlal Laxmandas Patel Vs. Narsinhbhai Kalidas Patel & Anrs.

On the other hand, counsel for defendant has submitted that the plaintiff had never advanced any loan to the defendant and whatever document has been relied upon by the plaintiff is forged and fabricated and the documents obtained during the business transaction have been misused by the plaintiff. It is further submitted that the recovery of the plaintiff was time barred and suit has been filed just to pressurize the defendant. It is further submitted that to get the time barred debt, the plaintiff has taken this plea and has filed this false suit with ulterior motives which is liable to be dismissed.

11. I have heard the arguments and perused the record. It is not disputed fact between the parties that the suit is entirely based on the document Ex. PW1/1. Document which is apparently loan document bearing revenue receipt of Rs. 1/- shows that it was intended to be a receipt, but no such amount has been shown in the Ex. PW1/1 which was received by the defendant against the receipt. Even it is assumed for the shake of arguments that the document Ex. PW1/1 is the loan agreement, then it was ought to be registered as per the requirement of the section 17 (1) (b) of Indian Registration Act, 1908, otherwise same is not admissible in evidence as per section 49 of the Act, but

the document may be seen for the collateral purpose. During the course of arguments, Ld. Counsel for defendant has pointed out that stamp duty has not been affixed on the loan agreement, but this objection was not taken up at the stage of tendering of this document, due to as per section 36 of Indian Stamp Act, 1899, the objection of Stamp Act cannot be taken up at this stage. Since the document may be seen for collateral purpose and the contents shows that the transaction might have been entered between the parties in verbitum of this document and property was kept as security with the lender by the way of this document. It is not disputed preposition that if the transfer of property is involved in any agreement that has to be taken place in view the provisions of Transfer of Property Act, 1882. If it is considered that the property was kept as security then the security is to be considered as mortgaged as per the Transfer of Property Act, 1882 being immovable property and Chapter 4 of the Transfer of Property Act, 1882 deals with the mortgage. Section 60 of Transfer of Property Act has given the right to mortgagor to redeem the mortgaged property and right of foreclosure is with the mortgagor. The preposition of mortgage of the property under the Transfer of Property Act clearly suggest that the transfer of mortgage property only may be done as per the provisions of the Transfer of Property Act, 1882. Further Section 85 to 90 of the Transfer of Property Act have been deleted from the statute book as the provisions of mortgage suit for redemption and foreclosure have been inserted U/o 34 of the CPC which is dealing with the same. The mortgage deed should be registered as per the Registration Act if the same is having the valuation of more than Rs. 100/□and without the registered mortgage, the mortgage deed even cannot be looked into for the evidence purpose except collateral. In view of the above said provisions, it is clear that without filing the mortgage suit, the plaintiff cannot have any lian over the the suit property especially for the time barred debt.

12. So far the factual aspect is concerned, the plaintiff was income tax payee and was paying income tax in 1984 □85 and allegedly advanced the amount in the year 1998□99, but he did not show the loan amount in his ITR and even paid the amount in cash despite having the specific provisions under Income Tax Act that the amount more than Rs. 20,000/□cannot be paid without cheque. Besides it, the plaintiff borrowed certain amount from one of his friend, but it is very strange that he does not remember the name of his friend who had paid the amount to him. Even the amount was not withdrawn from his account. The story of the plaintiff seems unreliable as it is very difficult that a person of the caliber of plaintiff was having a sum of Rs. 3 lacs at his home, whereas he was dealing in the business which was not of high level. The document is also bearing the signature of two witnesses, but none of witness has been examined by the plaintiff which also make the story of the plaintiff unreliable. Besides it, as per section 69 (ii) of the Transfer of Property Act, 1882, a notice was mandatory for redemption of mortgage security, but during cross examination, it has been specifically admitted by PW1 that neither such notice was ever issued to the defendant on the failure of the defendant to pay the amount after five months nor any amount was demanded by the plaintiff. Both the witnesses of the document Ex. PW1/1 are interest witnesses as one is the employee of the plaintiff and other is supplier of the material to him, and even those have also not been examined. The plaintiff has failed to prove the source of money and without proving the source of withdrawal of amount clearly shows that the story of the plaintiff is not reliable.

13. During the course of arguments, Ld. Counsel for plaintiff has emphasized that the defendant is under obligation to keep the suit property as it is being secured with plaintiff and selling out of the

suit property amounts to breach of that obligation. The arguments of Ld. Counsel has no force as obligation of the defendant govern only in that case if the plaintiff was to recover the amount in pursuance of the document Ex. PW1/1 after the period of five months or during the period when the amount was revocable. If a particular date i.e. 03.10.98 was mentioned in the document Ex. PW1/1, then the obligation of the defendant no. 1 towards the suit property may govern only up to the period of limitation, but after the lapse on the part of the plaintiff to recover the amount from the defendant or against the property, then the obligation of the defendant automatically discharged. The judgment AIR 1976 Gujarat 154 titled Keshavlal Laxmandas Patel Vs. Narsinhbhai Kalidas Patel & Anrs. relied upon by the plaintiff is not applicable in the present case. In that case, property was already transferred in favor of the applicant in pursuance of the agreement to sell and then third party interest was being created, but the facts of the case are not applicable in the present case as the property of the defendant is still with the defendant and plaintiff is claiming the right on the basis of the document which is not admissible in evidence and has no value in the eyes of law. Any obligation created by any document which is not having legal value in the eyes of law cannot create any obligation between the parties. Had it been the case of the plaintiff that the property was to be redeemed in pursuance of the mortgage, then the situation would have been different, but in the present case, no such situation is arising in this case. The plaintiff, on the one hand, is floating the provisions of Transfer of Property Act, Indian Registration Act and Indian Stamp Act, on the other hand he is seeking the assistance of law without complying with the law, then it cannot create any obligation in his favor. The plaintiff has filed this case when the limitation to recover the amount has been lapsed and the relief sought by the plaintiff cannot be granted by the way of permanent injunction. As such, this loan agreement in the shape of receipt cannot create any right in favor of the plaintiff in the suit property. Even if it is assumed for the shake of arguments that any right was created by this document, even then, it has been vanished after a period of limitation.

14. Keeping in view the facts and circumstances of the case, I am of the considered opinion that the plaintiff has failed to discharge the onus to prove the issue and issue is decided against the plaintiff and in favor of defendant.

15. RELIEF Plaintiff has failed to discharge the onus to prove the issue no. 5 that he is entitled for the relief, accordingly suit of the plaintiff is hereby dismissed. No such order of cost. Decree sheet be prepared accordingly. File be consigned to record room.

Announced in the open court

05-07-10

Pr. : Counsels for both parties

Vide separate judgment, suit of the plaintiff has been dismissed. No such order of cost. Decree sheet be prepared accordingly. File be consigned to record room.

(Devender Kumar) CCJ/ARC/MM 05□07□10