

Razia Begum Vs. Delhi Development Authority and Others

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Court : Delhi

Decided On : Oct-11-2013

Judge : Jayant Nath

Appellant : Razia Begum

Respondent : Delhi Development Authority and Others

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on :

26. 09.2013 Pronounced on:

11. 10.2013 + CS(OS) 509/2011 & IA Nos.5642/2011 RAZIA BEGUM Through Plaintiff Mr.S.D.Ansari, Mr.I.Ahmed and Mr.G.D.Ahmed, Advocates versus DELHI DEVELOPMENT AUTHORITY AND OTHERS Defendants Through Mr.Rajesh Mahajan and Mr.Rajat Agnihotri, Advocates for D-1/DDA Mr.Sanjay Poddar, Senior Advocate with Mr.Govind Kumar and Ms.Navlin Swain, Advocates for D-4 CORAM: HON'BLE MR. JUSTICE JAYANT NATH JAYANT NATH, J.

IA No.5642/2011 (u/O7R11CPC) 1. This is an application filed by defendant No.4 under Order 7 Rule 11 CPC seeking dismissal of the suit as barred by law.

2. It is the contention of the applicant that the present suit is hit by Article 56 of Schedule 1 read with Section 3 of the Limitation Act. He submits that the documents under challenge in the suit are required to be challenged within three

years from the date of its execution. Hence, it is stated that the suit for cancellation of the two documents is hopelessly barred by limitation on the face of it and cannot be entertained.

3. The plaintiff has filed the present suit seeking a decree of declaration declaring letter dated 20.03.1993 by which possession of Flat No.4115, C4, FF, Vasant Kunj, New Delhi was handed over by defendant No.1-DDA to defendant No.2 as illegal, null and void, a decree of possession for the said flat against the defendants and a decree of permanent injunction against the defendants pertaining to the said flat.

4. The brief facts which have led to the filing of the present suit as stated in the plaint are that a self-financing scheme was floated by defendant No.1 in 1982. The plaintiff got herself registered on 10.06.1982. She was declared successful in the bid held on 31.12.1987 and defendant No.1 sent a demandcum-allotment letter at her address at 472, Chitla Gate, Chawri Bazar, Delhi. It is stated that thereafter, the plaintiff lost original papers relating to the said flat including the demand letter. Hence, the plaintiff lodged a complaint with P.S. Jama Masjid on 17.01.1990. A request was made on 19.01.1990 to DDA for issuance of demand-cum-allotment letter. On 05.03.1991 a draw of lots was held and the plaintiff was allotted the suit property. She further claims that she did not receive the demand letter of the 5th and final instalment.

5. It is further alleged that defendant No.2 was a close friend and was having cordial relations with the husband of the plaintiff. The husband of the plaintiff went out of station in the month of February, 1990. The plaintiff was in the need of money. She requested defendant No.2 for a loan of Rs.1,50,000/-. Defendant No.2 gave the said loan. Further it is stated that as the officials of defendant No.1 were harassing the plaintiff, on the assurance of defendant No.2 that he would sort out all the problems, the plaintiff executed attorney in favour of defendant No.2. Later on when the husband of the plaintiff came back, both the plaintiff and the husband got suspicious as no communication was received from DDA. It is stated that later on, they came to know that defendant No.2 had played a fraud and got executed other documents also in his favour to usurp the flat of the plaintiff and the said

defendant No.2 in connivance with the officials of defendant No.1 got issued the demand letter of 5th and final instalment at his own personal residential address and also got issued the possession letter in his name at the aforesaid address. When the plaintiff came to know about the fraud being played by defendant No.2, the plaintiff got cancelled the said deed of attorney and other documents which were got fraudulently signed by her in the absence of her husband. It is further stated that on 30.09.1993 a letter was sent to the Deputy Director of defendant No.1 regarding revocation of the deeds and defendant No.1 was requested to desist from entertaining the claim of any person with respect to the suit property. A legal notice was also stated to have been served on defendant No.1. It is further alleged that the defendants 1 to 4 have colluded with each other and in collusion and in connivance with each other, got forged further documents showing that the plaintiff sold the flat to defendant No.2 by the said forged documents. Thereafter, it is stated that various applications were made under the RTI Act to DDA for the information and for giving appropriate records.

6. Learned senior counsel appearing for defendant No.4 submits that for the purpose of consideration of the present application under Order 7 Rule 11 CPC, this Court has only to look at the averments in the plaint and the accompanying documents filed by the plaintiff. He submits that the fact of the matter is, though it is not stated by the plaintiff, that the plaintiff sold the flat in question to defendant No.2 for valid consideration and executed an agreement to sell on 14.02.1990 and other documents. The said defendant No.2 thereafter sold the flat in 1993 to defendant No.3. Defendant No.3, thereafter, is stated to have sold the property to defendant No.4 in 1996. It is stated that on account of the fact that defendants No.2 and 3 have received the full consideration, non has been appearing on their behalf. Learned senior counsel has also relied upon various paras of the plaint and various documents filed by the plaintiff along with the plaint to show that the claim of the plaintiff is on the face of it barred by limitation. Reliance is placed on legal notice dated 19.07.1993 issued by Sh.C.P. Wig, Advocate on behalf of the plaintiff issued to the DDA pointing out that defendant No.2-A.S. Thandi is misusing the power of attorney and calling upon defendant No.1-DDA to desist from entertaining the claim of any person in respect of the suit property. Reference is also made to letter dated 30.09.1993 written by the plaintiff to defendant No.1-DDA submitting

documents including revocation of GPA and SPA and also requesting DDA not to entertain claim of any person in respect of the suit property. Reference is also made to another letter dated 24.01.1994. In this letter plaintiff has mentioned that defendant No.2 has manipulated on the basis of the forged signatures, to complete the procedure and has got possession of the suit flat with the grace of the staff of DDA. Hence it is requested that letter of possession of the flat may be handed over to the plaintiff. The same letter is addressed to Commissioner (Housing), DDA. Reliance is placed on letter dated 16.08.1995 written by DDA to the plaintiff pointing out that they have received an application from defendant No.3 for conversion of the property from leasehold to freehold which flat the said defendant No.3 had purchased on the basis of GPA and agreement to sell executed from defendant No.2. The plaintiff was requested to clarify the position. Learned senior counsel has strongly stressed on letter dated 13.06.1996 which was issued by DDA to the plaintiff where it was pointed out that defendant No.3 as attorney of the plaintiff had applied for conversion of the flat to free hold and that there are two claimants for the flat and a dispute has arisen. DDA advised the plaintiff to get her dispute sorted through the court of law so that DDA could take further action as per the decision of the court. Learned counsel stressed that this is a clear unequivocal cause of action which had arisen in favour of the plaintiff on receipt of the said communication from DDA and she should have filed appropriate proceedings in court within three years from the said date.

7. It is further stressed that after the receipt of letter dated 13.06.1996 from DDA to the plaintiff, no steps whatsoever have been taken by the plaintiff to claim her rights to the suit property. He submits that thereafter in May 2009 the plaintiff appears to have again woken up and started writing RTI applications to DDA asking for various documents.

8. The learned senior counsel relies upon Article 58 of Schedule 1 of the Limitation Act to state that to seek a decree of declaration, the limitation is three years from the date when the right to sue first accrues. Learned senior counsel has relied upon the following judgments to support his contention that the limitation is three years from the date when the right to sue first accrues i.e.: (i) Khatri Hotels Private Ltd. & Anr. Vs. Union of India and Anr., 2011 (10) Scale 190; (ii) Sanjeev Kalra vs.

Jyoti Kalra & Ors. in CS(OS) 2777/2012 dated 18.10.2012; (iii) Hardesh Ores Pvt. Ltd. Vs. M/s. Hede and Company, 2007(7) SCALE348; (iv) Tilak Raj Bhagat vs. Ranjit Kaur, 159 (2009) DLT470 He submits that indisputably in 1996 and prior thereto, the plaintiff was fully aware that defendant No.2 had taken possession of the suit property from DDA. She was aware that defendant No.2 had sold the flat to defendant No.3 and that defendant No.3 had applied for conversion of the flat to freehold. In view thereof she was obliged, in terms of Article 58 of the Schedule 1 of the Limitation Act, to take steps within three years from the said period. The present suit now filed in 2011 is hopelessly barred by limitation on the face of it. Hence, he submits that in terms of Order 7 Rule 11, the present suit is barred by law. He submits that this application is liable to be allowed and the suit is liable to be dismissed.

9. In contrast, learned counsel for the plaintiff has strongly urged that the admitted fact is that the original file of the present that is not available with DDA. In fact DDA has made a complaint with the police. It is stated that on account of the fact that the file is missing, clearly there is a great fraud committed by the defendants in connivance with each other and he submits that the beneficiary of this fraud is obviously defendant No.4. He relies upon a letter dated 13.10.2010 written by DDA to the plaintiff requesting the plaintiff to furnish affidavit that the said flat has not been sold and has also not been parted away. He submits that necessary affidavit was duly filed by the plaintiff. He submits that the cause of action arose from this date and hence, the suit has been filed within the limitation. Learned counsel also relies upon the judgment of the Honble Supreme Court in the case of Bhau Ram v. Janak Singh and Ors [2012]. SCCR739 to contend that while considering application under Order 7 Rule 11 CPC, the Court has to examine only the averments in the plaint and the pleas taken by the defendant in his written statement would be irrelevant.

10. He has reiterated that his client had no knowledge of the fraud perpetuated upon the plaintiff. He further states that the value of the property when it was allotted was more than Rs. 20 lacs and defendant No.2 claims to have paid a paltry sum of Rs. 2.85 lacs. He states that the original receipts given by DDA are available with him. This court asked the learned counsel to tell when the plaintiff

learnt about the fraud. He submitted that when the plaintiff deposes in the witness box, she will give the answer.

11. The issue that now arises is as to whether the present suit is barred by law and the provisions of Order 7 Rule 11 CPC would be applicable to the facts of this case. Relevant portion of Order 7 Rule 11 CPC reads as follows:

11. Rejection of plaint.-. The plaint shall be rejected in the following cases:- (a) where it does not disclose a cause of action; (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so; (c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so; (d) where the suit appears from the statement in the plaint to be barred by any law; (e) where it is not filed in duplicate; (f) where the plaintiff fails to comply with the provisions of rule 9. Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp paper shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature for correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

12. Hence according to the said provision of Order 7 Rule 11 (d), in case a suit is barred by law, the same is liable to be dismissed.

13. Reference may now be had to Entry 58 and 59 of Schedule 1 of the Limitation Act and Section 3 of the Limitation Act which read as follows: Description of Suit
Period of limitation

58. To obtain any other declaration 59. Three years Time from which period begins When the right to sue first accrues. To cancel or set aside an instrument or decree or for the rescission of a contract Three years When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him. Section 3(1) of the Limitation Act reads as

follows:

3. Bar of limitation. - (1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.

14. Reference may be had to the judgments cited by the learned senior counsel for the defendant No.4. In *Khatri Hotels Private Ltd. & Anr. Vs. Union of India and Anr.*, (supra), the Honble Supreme Court held as follows:

25. Article 120 of the 1908 Act was interpreted by the Judicial Committee in *Mt. Bolo v. Mt. Koklan* AIR 1930 PC270 and it was held:

There can be no right to sue until there is an accrual of the right asserted in the suit and its infringement, or at least, a clear or unequivocal threat to infringe that right, by the defendant against whom the suit is instituted.

...

27. While enacting Article 58 of the 1963 Act, the legislature has designedly made a departure from the language of Article 120 of the 1908 Act. The word first has been used between the words `sue and `accrued. This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued.

This court in *Sanjeev Kalra vs. Jyoti Kalra & Ors.*(supra), held as follows:

6. A suit for cancellation of the documents which is filed under Section 31 of the Specific Relief Act, 1963 is governed by Article 59 of the Limitation Act, 1963 i.e it has to be filed within three years from the date of knowledge of the documents, execution of which is challenged. In the present case, two agreements to sell under which the plaintiff has transferred rights in the first floor, second floor with

terrace of the property are dated 19.4.2006 and 5.5.2006 respectively i.e almost six years prior to filing of the suit.

The legal position that flows from the above is that in a suit for declaration, the limitation is three years from the date when the right to sue first accrues. Similarly, in a suit to cancel or to set aside any instrument, the limitation is three years from when the facts entitling the plaintiff to have the instrument cancelled first become known to the plaintiff.

15. It has now to be seen in the facts of this case as to when the cause of action first arose in favour of the plaintiff or when the plaintiff had knowledge about the execution of documents in favour of defendant No.2. This enquiry has to be made keeping in view the legal position that when considering an application under Order 7 Rule 11 CPC, the court can only look at the averments in the plaint and the accompanying documents. In *Tilak Raj Bhagat vs. Ranjit Kaur* (supra) this court held as follows:

6. It may be worthwhile to mention here that while considering an application under Order 7 Rule 11 CPC, the Court has to look at the averments made in the plaint by taking the same as correct on its face value as also the documents filed in support thereof. Neither defence of the defendant nor averments made in the application have to be given any weightage. Plaint has to be read as a whole together with the documents filed by the plaintiff.

To the same effect are the judgements of the Division Bench of this Court in the case of *Indian City Properties Ltd. Vs. Vimla Singh* 198(2013) DLT432 and in the case of *Inspiration Clothes & U vs. Collby International Ltd.*, 88(2000) DLT769 16. The Honble Supreme Court in the case of *Hardesh Ores Pvt. Ltd v. M/s Hede and Company* 2007 (7) SCALE348 noted as follows:

The language of Order VII Rule 11 CPC is quite clear and unambiguous. The plaint can be rejected on the ground of limitation only where the suit appears from the statement in the plaint to be barred by any law. Mr. Nariman did not dispute that law within the meaning of clause (d) of Order VII Rule 11 must include the law of limitation as well. It is well settled that whether a plaint discloses a cause of

action is essentially a question of fact, but whether it does or does not must be found out from reading the plaint itself. For the said purpose the averments made in the plaint, in their entirety must be held to be correct. Hence for the purpose of considering an application under Order 7 Rule 11 CPC only the averments made in the plaint have to be taken presuming it to be correct on the face of it and the documents filed along with it in support of it.

17. I may now go to the facts of this case. In the present case, a perusal of the plaint will show that the plaintiff has sought the following reliefs:

i) that a decree of declaration with costs may very kindly be passed in favour of the plaintiff and the defendants declaring that the letter dated 30.03.1993 refer 126(47) 88/SSS/VK-III dated 30.03.1993 by which the possession of flat No.4115, C-4, FF, Vasant Kunj, New Delhi aforesaid was handed over by the defendant No.1 to the defendant No.2 and subsequent documents issued/executed thereafter, as illegal, improper, ineffective, malafide and null and void; ii) that a decree of possession be passed in favour of the plaintiff and against the defendants ordering them to hand over the physical possession of flat No.4115, C-4, FF, Vasant Kunj, New Delhi to the plaintiff; iii) that a decree of permanent injunction may very kindly be passed in favour of the plaintiff and against the defendants thereby they be restrained from creating third party interest in the aforesaid flat No.4115, C-4, FF, Vasant Kunj, New Delhi.

18. Reference may be had to the averments in the plaint. In para 9 and 10, it is categorically stated that a fraud has taken place and defendant No.2 has played a fraud to try to usurp the flat of the plaintiff. It is further stated that when the fraud came to light, the plaintiff got cancelled the deed of attorney along with other documents which were got signed fraudulently in the absence of the plaintiffs husband. Para 10 of the plaint reads as follows:

10. That when the fraud played by the defendant No.2 came to light, the plaintiff got cancelled the said Deed of Attorney which alongwith other documents were got signed fraudulently in the absence of the plaintiffs husband by playing fraud.

19. In para 12 of the plaint, the plaintiff claims that defendant No.1-DDA was informed by the plaintiff through a letter dated 31.03.1989 that no other person should get benefit. It is also stated in the plaint that on 30.09.1993 a letter was sent by the plaintiff to defendant No.1 enclosing the revocation deed and photocopy of a complaint filed with the police with a request to defendant No.1 to desist from entertaining any claim of any person with respect to the suit property. It is further averred in para 15 of the plaint that a legal notice was got served on defendant No.1.

20. Similarly, in para 20 of the plaint, it is stated that the defendants in collusion and connivance with each other got forged further documents showing that the plaintiff had sold the flat to defendant No.2 by the forged documents, i.e., GPA and Agreement to Sell and that defendant No.2 had then given the GPA to defendant No.3. It is further stated that subsequently the plaintiff came to know from the CIC that defendant No.3 has sold the flat to defendant No.4 and that defendant No.4 has got the said flat free hold through execution of a conveyance deed from defendant No.1 on the basis of the said forged documents.

21. Similarly the relevant portion of para 35 relating to cause of action reads as under:

35. ... the cause of action further arose when the plaintiff got cancelled/revoked the Deed of Attorney of the defendant No.2 and thereafter it arose on number of dates when the defendant No.1 entertained the defendant No.2 and other defendants with regard to the said flat. The cause of action arose when the defendant No.1 in collusion and connivance with the other defendants handed over the possession of the flat to the defendant No.2 on 23.03.1993 on the basis of forged and fabricated documents. The cause of action arose on 08.05.2009, 28.05.2009, 30.12.2009 and on other various dates when the RTI application was filed and followed up. ...

22. Hence, as per the plaint, the plaintiff had knowledge about the so called fraud done by defendant No.2 in 1993 or thereabouts inasmuch as she has written communication/sent legal notice to the said effect to DDA.

23. A perusal may now be had to some of the documents filed by the plaintiff along with the plaint. A reference may be had to the legal notice sent by the plaintiff to defendant No.1 copy of which is filed by the plaintiff. A perusal of the relevant portion of the legal notice will indicate that the plaintiff had informed defendant No.1 in 1993 that power of attorney executed in favour of defendant No.1 stands cancelled. Relevant portion of para 5 of the legal notice reads as follows:

5. That my client understands that the said A.S. Thandi is misusing the power of attorney and consequently my client got the said power of attorney cancelled and the said Shri A.S. Thandi is no longer holding the power of attorney on behalf of my client....

Hence the plaintiff knew about the acts done by defendant No.2 on 19.07.1993.

24. Reference may be had to letter filed by the plaintiff dated 16.08.1995 written by DDA to the plaintiff informing her about an application from Sh. Tejender Singh Gujral, defendant No.3. Relevant portion of the said letter reads as follows:

This office has received an application from Sh. Tejender Singh Gujral for conversion from lease hold to free hold in r/o. Above mentioned flat purchased by him from Sh. Ajit Singh Thandi on the basis of the G.P.A. and agreement o sell executed by Sh. Thandi on your behalf. On perusal of the allotment file of the above noted flat, it has been noticed that the G.P.A. executed by you in favour of Sh. Thandi has been revoked by you after which he was not empowered to utilise the powers delegated by you through the said G.P.A. You are requested to clarify the factual within 15 days from the date of receipt of this letter.

Hence in August, 1995 the plaintiff was aware that defendant No.2 had sold the flat in question to defendant No.3.

25. Reference may be had to letter dated 13.06.1996 written by DDA to the plaintiff and filed by the plaintiff, relevant portion of which reads as follows:

... I am directed to state that on Sh. Tejinder Singh Gujral in the capacity of your attorney of the above said flat has also applied for conversion in the name of Sh. Tejinder Singh Gujaral and Mrs. Amar Kaur Gujaral vide their application

No.114243 dt. 02.06.1994. There are now two claimants of the flat and a dispute has arisen. You are, therefore, requested to get your dispute settled through the court of law, so that further necessary action can be taken as per the decision of the Honble Court.

26. The averments in the plaint and the accompanying documents show that the legal rights of the plaintiff to the flat in question had been infringed and violated by defendants No.2 and 3 as far back in 1993-1996. Plaintiff had knowledge that defendant No.2 is claiming to be the owner and has taken possession of the flat from DDA and has sold the flat to defendant No.3 in 1993-1996. She had knowledge that defendant No.3 is seeking to convert the property into freehold in his favour. All these facts are clearly hostile and destructive of the rights that the plaintiff may claim on the suit property. Despite due knowledge of the plaintiff of these facts the plaintiff has failed to take steps to defend her title. These events took place in 1993 to 1995. The suit is filed in 2011.

27. Reference may be had to the judgment of the Honble Supreme Court in the case of Daya Singh vs. Gurdev Singh, AIR 2010 SC3240 In this case, the Honble Supreme Court approved the reliance of the learned counsel for the plaintiff on earlier judgments of the Privy Council and the Supreme Court relevant portion of which reads as follows:

7. .learned senior counsel strongly relied on a decision of the Privy Council reported in AIR 1930 PC270[Mt. Bolo v. Mt. Koklan and Ors.]. In this decision their Lordships of the Privy Council observed as follows:

There can be no right to sue until there is an accrual of the 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.

8. A similar view was reiterated in the case of C. Mohammad Yunus v. Syed Unnissa and Ors. MANU/SC/0359/1961 : AIR 1961 SC808 in which this Court observed:

the period of 6 years prescribed by Article 120 has to be computed from the date when the right to sue accrued and there could be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right.

9. In the case of C. Mohammad Yunus (supra), this Court held that the cause of action for the purposes of Article 58 of the Act accrues only when the right asserted in the suit is infringed or there is atleast a clear and unequivocal threat to infringe that right. Therefore, the mere existence of an adverse entry into the revenue record cannot give rise to cause of action.

Hence while computing limitation for a suit for declaration, the plaintiff has to assert a right and there has to be infringement of the said right or a threat to infringe that right by the defendant. In the present case, the plaintiff has asserted her rights in the suit property claiming that defendants No.2 and 3 are threatening her rights. Admittedly, defendants No.2 and 3 have infringed her rights. All this has taken place in 1993-1996.

28. A bare reading of the plaint and the accompany documents shows that the suit is barred by Section 3 of the Limitation Act. In view of the above, I hold that the present claim of the plaintiff on the face of it is barred by limitation.

29. One may also keep in mind that the only Decree of Declaration sought by the plaintiff in the plaint pertains to a declaration that letter dated 30.03.1993 by which possession of the suit property was handed over to defendants No.2 and 3 and subsequent documents be declared as illegal. In the plaint, the plaintiff admits existence of various other documents like alleged forged GPA, agreement to sell in favour of defendant No.2 and also execution and registration of conveyance deed by DDA in favour of defendant No.4. Yet the plaintiff seeks no relief in the present suit regarding the said documents, which documents are hostile to the alleged title of the plaintiff.

30. Reference may also be had to the judgment of Andhra Pradesh High Court in the case of Sannidhi Ratnavathi v. Arava Narsimhamurthy and Anr. AIR 2004 AP29 The Andhra Pradesh High Court held in the facts of that case that as the

plaintiff has lost title and interest in the suit property, the plaintiff has to avoid the said transaction by which he lost the title. Unless he avoids the said transaction in the manner known to law, he cannot become owner of the said property. He has to ask for specific relief to set aside the alienation covered by the sale deed done by his father.

31. In view of the above legal position even otherwise the present suit is liable to be dismissed.

32. Reference may also be had to the judgment of the Supreme Court in the case of N.V. Srinivasa Murthy and Ors. v. Mariamma (dead) and Ors. AIR 2005 SC2897. This matter pertains to an application under Order 7 Rule 11 CPC. While considering the said application, the Honble Supreme Court held as follows:

11. On the above averments, relief of declaring the registered sale deed dated 5.5.1953 to be a loan transaction and second relief of Specific Performance of oral agreement of reconveyance of the property by registered instrument should and ought to have been claimed in the suit. A suit merely for declaration that the plaintiffs are absolute owners of the suit lands could not have been claimed without seeking declaration that the registered sale deed dated 5.5.1953 was a loan transaction and not a real sale. The cause of action for seeking such a declaration and for obtaining re-conveyance deed according to the plaintiff's own averments in paragraph 9 of the plaint, arose on 25.3.1987 when the plaintiffs claimed to have paid back the entire loan amount and obtained a promise from the defendants to reconvey the property. Reckoning the cause of action from 25.3.1987, the suit filed on 26.8.1996, was hopelessly barred by time.

12. The averments in paragraph 12 of the plaint concerning the mutation proceedings before the revenue authorities did not furnish any fresh cause of action for the suit and they appear to have been made as a camouflage to get over the bar of limitation. The dispute of mutation in the revenue court between the parties arose only on the basis of registered sale deed dated 5.5.1953. The orders passed by Tehsildar/Assistant Commissioner did not furnish any independent or fresh cause of action to seek declaration of the sale deed of 5.5.53 to be merely a loan transaction. The foundation of suit does not seem to be the adverse orders

passed by revenue courts or authorities in mutation proceedings. The foundation of suit is clearly the registered sale deed of 1953 which is alleged to be a loan transaction and the alleged oral agreement of reconveyance of the property on return of borrowed amount. .

14. After examining the pleadings of the plaint as discussed above, we are clearly of the opinion that by clever drafting of the plaint the civil suit which is hopelessly barred for seeking avoidance of registered sale deed of 5.5.1953, has been instituted by taking recourse to orders passed in mutation proceedings by the Revenue Courts.

33. Even otherwise, a reading of the plaint would show that it is manifestly a vexatious plaint. The plaintiff has simply attempted to draft the plaint in manner to claim a fraud has been played upon her and the real cause of action has been camouflaged. It is quite clear that the present plaint is flagrant misuse of law. A plain reading of the plaint makes it clear that the same is vexatious and meritless. The plaint and the accompanying documents clearly show that in the period from 1993 to 1996 plaintiff had full knowledge about the flat in question having been taken over by defendant No.2 and having been sold to defendant No.3. She has chosen not to take any step at that stage but has woken up almost 15-16 years later to file the present suit claiming declaration, possession and injunction. The plaint stresses on the communications received from DDA in 2009 to 2010, trying to camouflage the real issues i.e. documents allegedly executed by the plaintiff in favour of defendant No.2 and by DDA in favour of defendant No.4.

34. There is clearly merit in the application of defendant No.4. The application is allowed. CS(OS) 509/2011 In view of the above orders passed in IA No.5642/2011 under Order 7 Rule 11 CPC, the suit is dismissed as barred by limitation. All other pending applications also stand disposed of. JAYANT NATH, J OCTOBER11 2013 Rb/raj