Ashok Malik Vs. Ramesh Malik

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SooperKanoon Citation : sooperkanoon.com/713752

Court : Delhi

Decided On : Jul-09-2007

Reported in : 150(2008)DLT693

Judge : Badar Durrez Ahmed, J.

Acts : Limitation Act, 1963 - Schedule - Article 54; Code of Civil Procedure (CPC), 1908 - Order 6, Rule 17 - Order 7, Rule 11

Appeal No. : IA Nos. 6049/2002 in CS (OS) No. 1837/2001

Appellant : Ashok Malik

Respondent : Ramesh Malik

Advocate for Def. : D.S. Narula and ; Vandana Miglani, Advs.

Advocate for Pet/Ap. : Ashish Bhagat and; Abdesh Chaudhary, Advs

Judgement :

Badar Durrez Ahmed, J.

1. This is an application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the CPC') filed on behalf of the defendant requesting this court to reject the plaint on the ground that the suit appears from the statements in the plaint to be barred by limitation.

2. The suit has been filed for specific performance of an alleged oral agreement to sell entered into between the defendant as the owner and the plaintiff as the intending purchaser of the property bearing No. C-10, Chirag Enclave, New Delhi-110 048. It is alleged by the plaintiff that the plaintiff came in occupation of the property being an employee of a company known as 'Modi Rubber Limited'. The said company was the tenant of the defendant. The plaintiff claims to have occupied the premises sometime in May, 1980. It is alleged that in October 1986, an oral agreement to sell was entered into between the plaintiff and the defendant whereby the defendant agreed to sell 50% of his share in the land and the entire terrace rights of the building thereon to the plaintiff for a sum of Rs 6 lakhs. It is alleged in the plaint that a sum of Rs 3.6 lakhs was paid to the defendant's brother and a further sum of Rs 0.40 lakhs was paid to the defendant in cash. The balance amount of Rs 2 lakhs was to be paid in installments to the wife and daughter of the defendant.

3. It is further alleged by the plaintiff that in February 1990, the defendant agreed to sell the entire property for a total sum of Rs 21 lakhs. The plaintiff alleges to have paid a sum of Rs 11.33 lakhs in cash in total by 1993. It was alleged that the defendant was not executing the sale deed because his mother was still alive and that the same became executable only in 1993 when his mother died (she actually died as stated in 1992 by the defendant). It is alleged that in March, 1993, the plaintiff requested the defendant to execute the sale deed but the same was not being executed.

4. It is an admitted fact that in 1996, the defendant filed an eviction suit against its tenant (Modi Rubber Limited). In February, 1997, the plaintiff moved an application in that suit seeking impleadment as a defendant. By an order passed in January, 2001, the plaintiff was added as defendant No. 2 in the said eviction suit without prejudice to the rights and contentions of the parties. The rent in respect of the premises was paid by Modi Rubber up to May, 1999 and now the same was being paid by the plaintiff.

5. It is also an admitted position that an amendment application under Order 6 Rule 17 had been filed by the plaintiff herein (defendant No. 2 in the eviction suit)

for amending his written statement to include a counter-claim. As stated in para 14 of the plaint, the plaintiff had moved the said application under Order 6 Rule 17 on 20.04.2001 and the same was dismissed by the learned Additional District Judge by his order dated 27.07.2001. It is, however, not mentioned in the plaint as to what was the nature of the counter-claim that the plaintiff herein was seeking in the said eviction suit. Though, Along with the plaint, the plaintiff filed a list of documents and the documents. One of the documents was a copy of the order rejecting the application of the plaintiff under Order 6 Rule 17 of the CPC in the said eviction suit. A reading of the said order discloses that the counter-claim was in essence a plea for specific performance of the very same agreement which is the subject matter of the present suit. One of the grounds of rejection of the amendment application was that the amendment sought was in respect of a plea which was barred by limitation. The learned Additional District Judge held as under:

11. First and foremost whether an amendment seeks to extend the limitation, where the claim is clearly barred by time. In the instant case the introduction of specific performance of contract would require the amendment to be filed within specified period and for the purpose of specific performance Article 54 of Limitation Act would apply. Specially the latter part of the said article where no period is specified, the refusal to perform would constitute the notice and the beginning of limitation for specific performance and in the instant case the defendant No. 2 required and demanded of the plaintiff to execute the sale deed in March 1993. And the amendment sought to be made through an application dated 20.04.2001 is clearly beyond the period of limitation prescribed for suit for specific performance and accordingly the relief claimed through amendment would be barred by limitation.

6. In the context of these circumstances, it was urged on behalf of the applicant / defendant that the issue of limitation with regard to the plea of specific performance already stands settled by the order dated 27.07.2001 whereby the amendment application of the plaintiff in the eviction suit was rejected. Instead of filing an appeal against that order, the plaintiff, shortly thereafter, filed the present suit on the same grounds. Apart from this, even on the facts as mentioned in the

plaint, the plaint has been presented beyond time and the same is liable to be rejected as such.

7. The plaintiff resisted this application on the ground that the plaint has not been filed beyond time and that if there is a contentious issue with regard to limitation, then there is no question of rejecting the plaint under Order 7 Rule 11. For this purpose, he relied upon the decision of the Supreme Court in the case of Liverpool & London S.P. & I Associated Ltd v. M.V. Sea Success I and Anr. : (2004)9SCC512 . The learned Counsel for the plaintiff also referred to the decision of the Supreme Court in the case of Popat and Kotecha Property v. State Bank of India Staff Association : (2005)7SCC510 to submit that in an application under Order 7 Rule 11, only the statements in the plaint ought to be seen and not the defense raised by the defendants.

8. It is true that while examining an application under Order 7 Rule 11, only the plaint and the material presented Along with the plaint can be seen. If upon an examination of the plaint and the admitted documents filed Along with the plaint it appears that the plaint is barred by any law (in this case law of limitation), then the plaint is liable to be rejected [See: Sanjay Kaushish v. D.C. Kaushish and Ors. : AIR1992 Delhi118 (para 16)]. In the present case, it is quite clear that the issue with regard to the plea of specific performance being barred by limitation has already been decided by the order dated 27.07.2001 whereby the learned Additional District Judge rejected the plaintiff's application in the eviction suit for bringing out the amendments to his written statement so as to include a counter-claim based on the said plea of specific performance. In my view, once that had been done and no appeal had been preferred there from, no occasion arose to enable the plaintiff to file a suit shortly thereafter seeking a decree of specific performance.

9. In any event, the limitation prescribed for a suit for specific performance of a contract as per Article 54 of the Schedule to the Limitation Act, 1963 is three years. The time from which the period begins to run is the date fixed for the performance or, if no such date is fixed, when the plaintiff has notice that the performance is refused. As per the averments made in the plaint, there was no

dated fixed for the performance. thereforee, the time from which the period begins to run would be when the plaintiff had notice that performance was refused. The averments contained in the plaint disclose that the plaintiff asked the defendant to execute the sale deed in March, 1993, but he did not. thereforee, the starting point of limitation would be March, 1993. The suit was filed on 05.09.2001. It was beyond the period of three years stipulated under the Limitation Act, 1963. Accordingly, the suit is time barred and the plaint is liable to be rejected on the ground that the suit appears from the statements made in the plaint to be barred by any law (in this case the law of limitation).

10. This application is allowed. The plaint is rejected with costs.