

(2016) 05 AHC CK 0318

ALLAHABAD HIGH COURT

Case No: Second Appeal No. 572 of 2016.

Ram Bhool Yadav and 3 Others -

Appellants @HASH Gyan Kunj

Construction Pvt. Ltd. and 4

Others

APPELLANT

Vs

RESPONDENT

Date of Decision: May 30, 2016

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 100

Citation: (2016) 119 ALR 278 : (2016) 3 ARC 621 : (2016) 133 RD 839 : (2017) 1 RJ 116

Hon'ble Judges: Pramod Kumar Srivastava, J.

Bench: Single Bench

Final Decision: Dismissed

Judgement

Pramod Kumar Srivastava, J. - Heard learned counsel for the appellants on point of admission of second appeal and perused the records.

2. Original Suit No. 52/2014, Gyan Kunj Construction Pvt. Ltd. v. Kallu and others, was filed for the relief of declaration and cancellation of deed, which is mentioned in paragraph 23 of the plaint. The description of cause of action for the suit is mentioned in paras 17 and 21 of the plaint. Paragraphs 17, 21 and 23 of the plaint are reproduced as under:-

17- ;g fd izfroknhx.k la0&1 rk 4 ds fir Jh tLlh }jk cSukek fnukafdr 08-12-2005 }jk tks Hkwfe oknh dEiuh dks fodz; dh x;h Fkh og [kjk la[;k 2442 fe0 xzke "kkgijq cEgSVk dh Fkh cSukesa esa VkbZi dh xyrh dk Kku ighy ckj oknh dEiuh dks fnukad 10-01-2014 dks gqvk gSA blls iwoZ mDr xyrh dk oknh dEiuh dks dksbZ Kku ugha FkkA

21- ;g fd oknh dks okn dk dkj.k fnukad 08-12-2005 gksus fu"ikfnr cSukek ckgd oknh ,oa izkIrr djus dCtk [kjk la0&2442 fnukad 22-10-2012 djus fu"ikfnr cSukek }jk izfroknhx.k la0&1 rk 4 ckgd izfroknhx.k la0&5 rk 8] fnukad 05-01-2014 nsus /kedh djus dCtk }jk izfroknhx.k la0&5 rk 8] fnukad 10-01-2014 izkIrr gksus izekf.kr izfrfyi cSukek fnukafdr 22-10-2012 ,oa ighy ckj irk yxus fyidh; =qfV] cSukek fnukafdr 08-12-2005 fnukad] 30-01-2014 dks djus badkj vkf[kjh vksj ls izfroknhx.k ckeqdk; xzke "kkgijq cEgSVk Mkluk rglhy o ftyk xkft;kckn iSnk gS vksj ekuuh; U;k;ky; dks okn dks lquus ,oa r; djus dk vf/kdkj izkIrr gSA

23- ;g fd oknh fuEu izkFkhZ gSA

v& ;g fd U;k;ky; dh fMdzh }kjk izfroknhx.k la0&1 rk 4 dks vknf"kr fd;k tkos fd os muds firk Jh tLlh }kjk oknh dEiuh ds gd esa fd, x, cSukek fnukafdr 08-12-2005 tks lc jftLV~kj dk;kZy;] izFke xkft;kckn ds ;gkWa ij cgh ua0&1] ftYn la0&6332 ds i" B la0&341@400 ds uacj 8161 ij fnukad 08-12-2005 dks ntZ gqvk gS] ds dze esa "kqf)i= oknh dEiuh ds i{k esa fu"ikfnr djsa vksj mDr cSukesa esa fyfidh; =qfV ls fy[ks x, [klijk la[;k 2242 ds LFkku ij 2442 dh ckcr "kqf)i= U;k;ky; }kjk fuf"pr vof/k esa fu"ikfnr dj iathd`r djk,A

vFkok

;g fd U;k;ky; dh ?kks"k.kkRed fMdzh }kjk ?kks"k.kk bl vej dh tkjh dh tkos dh izfroknhx.k la[;k 1 rk 4 ds firk }kjk tks cSukek fnukad 08-12-2005 dks oknh dEiuh ds i{k esa fu"ikfnr fd;k x;k gS vksj tks lc jftLV~kj dk;kZy; izFke xkft;kckn ds ;gkWa ij cgh ua0&1 ftYn la0&6332&d i" B la[;k 341@400&d uacj 8161 ij fnukad 08-12-2005 dks ntZ gqvk gS] ds }kjk [klijk la[;k 2442 jdck 0-5060 gS0 xzke "kkgijq cEgSVk ijkuk Mkluk rglhy o ftyk xkft;kckn dh Hkwfe fodz; dh x;h gS vksj mDr cSukesa esa tks [klijk la[;k 2242 fy[kk x;k gS] og ek= fyfidh; =qfV gS vksj oknh dks [klijk la[;k 2442 dh Hkwfe mDr cSukesa ls fodz; dh x;h gSA

c& ;g fd U;k;ky; dh fujLrhdj.k dh fMdzh }kjk cSukek fnukafdr 22-10-2012 tks lc jftLV~kj dk;kZy; izFke xkft;kckn ds ;gkWa cgh ua0&1 ftYn la[;k 10407 ds i" V la[;k 123 ls 230 ij dzekad 9650 ij fnukad 22-10-2012 dks ntZ gqvk gS] dks fujLr fd;k tkdj mldh lwpuk lc jftLV~kj dk;kZy; izFke] xkft;kckn dks Hksth tk,A

;g fd U;k;ky; dh LFkk;h fu"ks/kkRed vkKk dh fMdzh }kjk izfroknhx.k muds vf/kd`r izfrfuf/k ,oa deZpkfj;ksa dks Hkwfe [klijk ua0&2442 fe0 jdck 0-5060 gS0 xzke "kkgijq cEgSVk ijkuk Mkluk rglhy o ftyk xkft;kckn ds fdlh Hkh Hkkx ij dCtk djus] oknh ds fuekZ.k dks rksM+us] mDr Hkwfe dks fodz; djus] vkm+] c; djus vFkok vU; fdlh izdkj ls oknh ds "kkafriw.kZ dCts ;k iz;ksx esa ck/kk mRiUu djus ls InSo ds fy, fu"ksf/kr fd;k tk,A

n& ;g fd okn O;; oknh dks izfroknhx.k ls fnyk;k tk,A

j& vU; izfrdkj tks fgrdj oknh dks mUgsa oknh dks izfroknhx.k ls fnyk;k tk,A

3. In original suit, defendants moved application 79-C2 under Order 7, Rule 11 CPC read with Section 151 CPC. In this application, defendants mentioned that first cause of action arose on 2.8.2005 when sale deed in question was executed in favour of plaintiff, therefore, present Original Suit No. 52/2014 instituted after about 9 years of arising of said cause of action is barred by limitation, because limitation for the relief sought is only three years. On these grounds, it is stated that plaint be rejected under Order 7, Rule 11 CPC.

4. After inviting objection and affording opportunity of hearing to parties, the Civil Judge (Junior Division), Ghaziabad had allowed said application of defendants and rejected the plaint under Order 7, Rule 11 CPC by its order dated 28.8.2015.

5. Against the order dated 28.8.2015 of the trial court, Civil Appeal No. 101/2015, Gyan Kunj Construction Pvt. Ltd. v. Kallu Singh and others, was preferred by plaintiff of the original suit. This appeal was heard and allowed by the judgment dated 30.3.2016 of Additional District Judge, Court No.-5, Ghaziabad, and the matter was remanded to trial court for disposal of original suit in accordance with law. In this judgment, lower appellate court had framed point of determination and decided it in favour of plaintiff with its own conclusion that plaint is not barred by law and suit is not barred by law of limitation.

6. Aggrieved by the impugned judgment dated 30.3.2016 of the first appellate court, present Second Appeal has been preferred by defendants of the original suit.

7. Learned counsel for the appellant contended that limitation of any suit runs from the accrual of first cause of action, and in paragraph 21 of the plaint relating to cause of action, it is mentioned that first cause of action arose on 2.8.2005;

therefore it is immaterial as to when subsequent cause of actions arose and limitation had started running from accrual of first cause of action on 2.8.2005. On these grounds, he contended that since limitation of relief sought in plaint if only three years and suit has been filed in year 2014 much beyond start of limitation on 2.8.2005, so it is barred by law of limitation and trial court's finding was correct that on the basis of plaint averment, the plaint should have been rejected. He contended that these points were not properly appreciated by first appellate court. He further cited **Khatri Hotels Private Limited and Anr. v. Union of India and Anr., AIR 2011 SC 3590**, in which Apex Court has held as under:-

"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."

8. On the basis of these arguments, he reiterated that the judgment of trial court was erroneous, therefore appeal should be admitted for being allowed.

9. This legal position is admitted for the relief sought in plaint that limitation is three years from the time of accrual of first cause of action. Section 9 of the Limitation act 1963 reads that where once time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it. It is also held by Hon'ble Apex Court in *Khatri Hotels* (supra) that cause of action for assessing the period of limitation will begin to run from the date when right to sue when first cause of action accrued.

10. In light of above mentioned legal provisions, a perusal of plaint reveals that admittedly plaintiff had purchased the property by registered sale deed dated 8.12.2005, which his basis of his title and claim. But the suit is mainly for the rectification of that sale-deed. A perusal of paragraphs 17 and 21 relating to cause of action, although apparently show that cause of action for the relief claimed accrued to plaintiff on different dates right from 8.12.2005, 10.1.2014 and 30.1.2014, but the full reading of these paragraphs and plaint averments makes it explicitly clear that plaintiff's case is that although he had purchased the property in question on 8.1.2014 relating to Khasra no. 2442, but for the first time he came to know about the typing error in sale-deed dated 8.12.2005 on 10.1.2014 and, thereafter again cause of action arose on 30.1.2014. The cause of action involves a bundle of facts that reflect the intention of the plaint averment. For determining the cause of action the contents of pleadings, facts and circumstances has to be understood, instead of mere words only. In this matter, although in paragraph 21 of the plaint, it is mentioned that cause of action arose on 8.12.2005 but from total reading of said

sentence it is found that cause of action for the suit arose to plaintiff on 22.10.2012, 10.1.2014 and 30.1.2014, then original suit was instituted on 4.2.2014 for above mentioned relief.

11. On the basis of above discussion, this finding of lower appellate court is found correct that this point relating to limitation cannot be decided on this preliminary stage but can be decided on the basis of adduced evidences.

12. No other point of law or substantial question of law arises in this matter. None of the contentions of learned counsel for the appellant are found acceptable.

13. In view of the above, this second appeal is dismissed, but for removal of any doubts it is made clear that trial court shall decide the suit in accordance with law giving its finding on each and every point including on point of limitation afresh without being influenced by any order of first appellate court or this Court.