(2007) 6 ALLMR 953 : (2007) 6 ALT 3 : (2007) 4 AWC 4091 Supp : (2008) 1 CHN 95 Supp : (2007) 11 JT 472 : (2007) 4 LW 798 : (2008) 1 MLJ 45 : (2008) 149 PLR 326 : (2008) 1 RLW 776 : (2007) 11 SCALE 549 : (2007) 10 SCC 59 : (2007) 10 SCR 520 : (2008) 1 UC 1

Supreme Court of India

Case No: Civil Appeal No. 4626 of 2007 (Arising out of SLP (C) No. 8781 of 2006)

Ram Prakash Gupta		APPELLANT
	Vs	
Rajiv Kumar Gupta and Others		RESPONDENT

Date of Decision: Oct. 3, 2007

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 7 Rule 11, Order 7 Rule 12, Order 7 Rule 9
- Evidence Act, 1872 - Section 116
- Limitation Act, 1963 - Article 59

Citation: (2007) 6 ALLMR 953 : (2007) 6 ALT 3 : (2007) 4 AWC 4091 Supp : (2008) 1 CHN 95 Supp : (2007) 11 JT 472 : (2007) 4 LW 798 : (2008) 1 MLJ 45 : (2008) 149 PLR 326 : (2008) 1 RLW 776 : (2007) 11 SCALE 549 : (2007) 10 SCC 59 : (2007) 10 SCR 520 : (2008) 1 UC 1

Hon'ble Judges: Tarun Chatterjee, J; P. Sathasivam, J

Bench: Division Bench

Advocate: Vinay Garg, for the Appellant; Shalini Kapoor, for Madhu Sikri, for the Respondent

Final Decision: Disposed Of

Judgement

P. Sathasivam, J.
Leave granted.

2. This appeal is directed against the judgment dated 27.4.2006 passed by the High Court of Delhi in Regular First Appeal No. 188 of 2006 whereby the High Court dismissed the appeal filed by the appellant herein. The respondents are the sons of the appellant''s elder brother who died in the year 1986.

3. The brief facts are as under:

In the year 1957, since the appellant was a handicapped person, the father of the appellant purchased a piece of land in the name of and for the benefit of the appellant herein, who was minor at that time by way of registered sale deed dated 02.09.1957. The father of the appellant died in the year 1965 and at the time of his death, the plot underneath the house in question was lying vacant. The appellant was actively engaged in the business, therefore, in the year 1966 he raised a full fledged 3 storey house on the said plot with his funds. Moreover, a loan of Rs. 30,000/- was also taken from the Life Insurance Corporation by the appellant for construction of the house and later on it was repaid. After constructing the house, the first floor of the building was let out to one Aseema Architect by the appellant in the year 1969. The appellant and his family and the respondents'' father and his family were living together in House No. 107, Chawri Bazar, Delhi. Since relations between the brothers were cordial, on request of the respondents'' father, the appellant allowed him to use the second floor of the house as a licensee. In the year 1974, respondents'' father played a fraud and filed two suits in the name of his sons respondents herein, bearing Suit No. 183 of 1974 and 133 of 1974 for declaration and possession of the ground/first floor. There is no dispute of ownership of the appellant as far as the second and third floors of the house are concerned. In September 1986, after the death of their father, the respondents claimed the possession of the first floor of the building on the basis that they had obtained some decree from the Court, the particulars of which were not disclosed. In spite of best efforts, the appellant could not obtain the details of the case, therefore, no action could be taken. Aseema Architect, who was paying rent to the appellant, stopped payment of rent and in the year 1989, filed interpleader suit No. 424 of 1989 alleging therein that there is a bona fide dispute about the person(s) to whom the rent is payable. In that suit, the details of the decree obtained frequently in the year 1976 was disclosed. On 7.2.1990, the appellant herein filed Suit No. 378 of 1993 before the Additional Dist. Judge, Delhi praying for the following reliefs:

a) declare plaintiff (appellant herein) as absolute and exclusive owner of H.No.8, Nizamuddin Basti, N.D. and to declare the decrees dated 5.2.1976 in Suit No. 183/74 and dated 19.1.1976 in Suit No. 133/74 as null and void.

b) Grant decree for possession of 2nd floor of H.No.8, Nizamuddin Basti, New Delhi in favour of the appellant herein.

Written statement was filed by the respondents herein in which the respondents had taken the plea that the appellant appeared in the suits and as such he had full knowledge of the case. The following issues were framed by the trial Court:

(1) Whether the suit is barred by limitation?

(2) Whether Plaintiff is entitled for a decree of declaration that the plaintiff is absolute and exclusive owner of the suit property in question?

(3) Whether plaintiff is entitled for a decree of declaration declaring the decree dated 5.2.1976 in Suit No. 183/74 as null and void?

(4) Whether the plaintiff is entitled for a decree of possession as prayed for?

Evidence by way of affidavit of the plaintiff (appellant herein) was filed on which cross examination of the appellant was closed. In the cross-examination, no question on limitation was asked by the respondents. It is at this stage, the respondent moved an application under Order 7 Rule 11(d) C.P.C. for rejection of the plaint on the ground of suit being barred by law of limitation. Reply to the said application was filed. The trial Court dismissed the suit of the appellant herein merely on the basis of the limitation holding that since partial rejection of the plaint is not permitted in law, the entire plaint has to be rejected.

4. Aggrieved by the order of the trial Court, the appellant preferred an appeal before the High Court of Delhi. The High Court dismissed the appeal recording that since there cannot be a partial rejection of suit, hence the entire suit has to be dismissed. Being aggrieved by the said order, the present appeal has been filed by the appellant before this Court.

5. We have heard Mr. Vinay Garg, learned Counsel appearing for the appellant and Ms. Shalini Kapoor, learned Counsel appearing for the respondents.

6. Learned Counsel appearing for the appellant submitted that the approach of the High Court is against the settled principle of law that when there are numerous cause of action joined in one claim, it is not permissible to the Court to reject the claim under Order VII Rule 11 C.P.C. if it is possible to give a decree for some of the cause of action. He also submitted that the trial Court entertained the application of the respondents herein under Order VII Rule 11(d) C.P.C. filed after 15 years of institution of the suit that too after filing of written statement, framing of issues, cross-examination of the plaintiff-appellant herein and resultantly permitted the respondents to circumvent the case to avoid decision on the specific issue of limitation, framed as one of the issues by the Court, on the basis of evidence produced on record. He further submitted that the application has been allowed by reading one para in isolation and ignoring other relevant paras of the plaint which specifically deal with the date of knowledge of the fraudulent decree obtained by the respondent on the basis of which ownership rights in the property were claimed. Learned Counsel submitted that the point of limitation being a mixed question of law and fact should have been decided after appreciation of evidence already on record and not summarily under Order VII Rule 11 CPC.

7. On the other hand, learned Counsel appearing for the respondents submitted that inasmuch as the trial Court and the High Court, on proper verification of the plaint averments and finding that there is no material for delay in filing the suit, rightly rejected the plaint and allowed the application prayed for dismissal of the above appeal.

8. We have perused the relevant materials and considered the rival contentions.

9. The only question to be considered in this appeal is whether the defendants/respondents herein made out a case for rejection of the plaint under Order VII Rule 11(d) of the C.P.C.

10. As per Order VII Rule 11, the plaint is liable to 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;

11. In 264124 it was held with reference to Order VII Rule 11 of the Code that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power at any stage of the suit - before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under Clauses (a) and (d) of Order VII Rule 11 of the Code, the averments in the plaint are the germane: the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage.

12. 297780 , it was held that the basic question to be decided while dealing with an application filed under Order VII Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order VII Rule 11 of the Code.

13. The trial Court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order VII Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order X of the Code. (See 281176).

14. It is trite law that not any particular plea has to be considered, and the whole plaint has to be read. As was observed by this Court in Roop Lal Sathi v. Nachhattar Singh Gill

(1982) 3 SCC 487 only a part of the plaint cannot be rejected and if no cause of action is disclosed, the plaint as a whole must be rejected.

15. In 294164 , it was observed that the averments in the plaint as a whole have to be seen to find out whether Clause (d) of Rule 11 of Order VII was applicable.

16. In 280023 , this Court held thus:

15. There cannot be any compartmentalization, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction or words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities.

17. For our purpose, Clause (d) is relevant. It makes it clear that if the plaint does not contain necessary averments relating to limitation, the same is liable to be rejected. For the said purpose, it is the duty of the person who files such an application to satisfy the Court that the plaint does not disclose how the same is in time. In order to answer the said question, it is incumbent on the part of the Court to verify the entire plaint. Order VII Rule 12 mandates where a plaint is rejected, the Court has to record the order to that effect with the reasons for such order. Inasmuch as the learned trial Judge rejected the plaint only on the ground of limitation, it is useful to refer the averments relating to the same. Learned Counsel appearing for the appellant, by taking us through the entire plaint, submitted that inasmuch as sufficient materials are available in the plaint, it is proper on the part of the trial Court to decide the suit on merits and not justified in rejecting the plaint that too after the evidence of the plaintiff. In the light of the assertion of the counsel for the appellant, we carefully verified the plaint averments. In paragraph 5, the appellant/plaintiff has specifically stated that he is a handicapped person from the beginning and it is difficult for him to move about freely. The following averments in the plaint are relevant to answer the point determined in this appeal:

a) That without any intimation to the Plaintiff, said Rajeev Kumar Gupta got decreed the said suit. It seems that the said Rajeev Kumar Gupta in collusion with his father Shri Inder Prakash Gupta produced some-one-else under the pretext of Shri Ram Prakash Gupta, the present Plaintiff in the court and got the said decree in his favour on the said false pretext by playing a fraud upon the Plaintiff as well as upon the court. The Plaintiff never appeared in the above said cases before the High Court nor ever made any statement to the effect that the suit of the Plaintiff may/might be decreed and as such the judgment and decree dated 05.02.1976 passed in the above said suit No. 183/74 entitled as Rajeev

Kumar v. Ram Prakash Gupta is totally false, baseless, nullity and void in the eyes of law and is not at all binding upon the Plaintiff and the same has been procured by fraud and mis-representation as submitted above.

b) That the Plaintiff came to know for the first time about the passing of the above said decree in favour of said Rajeev Kumar Gupta by the High Court of Delhi, in the above said suit No. 183/74 in the month of October, 1986. It is submitted that Shri Inder Prakash Gupta, the elder brother of the Plaintiff died at Delhi in the month of September, 1986 and after his death Shri Rajeev Kumar Gupta asked the Plaintiff to give first floor portion of the above building No. 8, Nizamuddin Basti to them and alleged that there was a High Court judgment in their favour. However, no particulars of the said judgment were given at that time by any of the Defendants, and therefore, the Plaintiff could not take any action at that time.

c) That the said tenant M/s Aseema Architect also stopped payment of rent from the year 1985 and perhaps on the instructions or at the instance of said Indra Prakash Gupta, the elder brother of the Plaintiff, he deposited the rent from July, 1985 to March, 1986 in the court of Rent Controller, Delhi. However, after the death of Shri Inder Prakash Gupta, the above said tenant refused to pay the rent and ultimately he filed a inter-pleader suit being suit No. 424/89 entitled as Aseema Architect versus Ram Prakash alleging therein that there is a bonafide dispute about the person/s to whom the rent is payable. In fact, the said suit was and is not maintainable because admittedly the said tenant took the above said premises from the Plaintiff and he is stopped from denying the title of the Plaintiff u/s 116 of the Indian Evidence Act and for other reasons also.

d) That in any case, it is submitted that as on one of the dates, the Plaintiff could not appear because of his illness, the learned trial Court proceeded ex-parte and decreed the suit ex-parte in favour of said Shri Rajeev Kumar Gupta. It is submitted that the full details of the above said judgment were given by the said Rajeev Kumar in the said court as the copy of the said judgment of the High Court was filed therein and thereafter taking the details from the same, the High Court''s file was inspected and the malafide motives and designs of the Defendants came to light and, therefore, the present suit is being filed at the earliest possible challenging the said judgment and the decree of the High Court of Delhi.

18. As observed earlier, before passing an order in an application filed for rejection of the plaint under Order VII 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 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 VII 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.

19. It is also relevant to mention that after filing of the written statement, framing of the issues including on limitation, evidence was led, plaintiff was cross-examined, thereafter before conclusion of the trial, the application under Order VII Rule 11 was filed for rejection of the plaint. It is also pertinent to mention that there was not even a suggestion to the plaintiff/appellant to the effect that the suit filed by him is barred by limitation.

20. On going through the entire plaint averments, we are of the view that the trial Court has committed an error in rejecting the same at the belated stage that too without adverting to all the materials which are available in the plaint. The High Court has also committed the same error in affirming the order of the trial Court.

21. In the light of our above discussion, we set aside the order of the trial Court dated 20.2.2006 passed by the Civil Judge, Delhi in Suit No. 318/2003 and the judgment dated 27.4.2006 passed by the High Court of Delhi in R.F.A. No. 188 of 2006. In the result, the civil appeal is allowed and the Civil Judge is directed to restore the suit to its original file and dispose of the same on merits preferably within a period of six months from the date of receipt of the copy of this judgment. It is made clear that except on the question of limitation, we have not gone into the merits of the claim made by both parties. No costs.