

(2008) 08 DEL CK 0185

Delhi High Court

Case No: C.S. (OS) No. 150 of 2007

Shri Rajiv Suri

APPELLANT

Vs

Shri Rajesh Goesl and Another

RESPONDENT

Date of Decision: Aug. 28, 2008

Acts Referred:

- Limitation Act, 1877 - Article 91
- Limitation Act, 1963 - Article 59
- Specific Relief Act, 1963 - Section 31

Citation: (2008) 9 ILR Delhi 148

Hon'ble Judges: S. Ravindra Bhat, J

Bench: Single Bench

Advocate: Raman Gandhi, for the Appellant; None, for the Respondent

Final Decision: Dismissed

Judgement

S. Ravindra Bhat, J.

The plaintiff, in this suit, seeks a declaration of invalidity of, and cancellation of a Deed of Power of attorney and Will, both dated 30-5-2001.

2. The suit averments are that the plaintiff and his wife, Indu Puri, were owners of property in the ring shop number 1, Stall block, Community Centre, Yusuf Sarai, New Delhi, (hereafter called "suit property"), measuring 36 square meters along with kitchen and courtyard which were sold and handed over to them. The plaintiff alleges that he was acquainted with defendants from whom he had secured a loan of Rs. 2,00,000 in cash which had been repaid. It is alleged that when the loan was obtained, the defendants had required the plaintiff to furnish security. This allegedly was on the representation that such documents constituted "lien" for the loan. As the plaintiff knew the defendants well, he did not have any hesitation in executing the documents, for the purpose of security. Therefore a General Power of Attorney dated 30-5-2001 and a Will of the same date was executed along with some blank

papers.

3. It is further alleged that the property was purchased by the plaintiff and his wife from one Baljit Singh, the original owner of the property on 26.03.2001. The plaintiff alleges that he and his wife sold the suit property to one Smt. Rashmi Jain on 30-9-2003, by executing valid title documents such as Agreement to Sell, General Power Of Attorney, Special Power of Attorney; Affidavits; receipt; Will and letter of possession. It is also alleged that the plaintiff and his wife handed over the position of the suit property to the said purchasers, along with all original documents of title.

4. In view of these developments, the plaintiff alleges that the documents such as General Power of Attorney; Will etc, which were given earlier but not returned by the defendants, despite the amount of Rs. 200,000/- having been returned by the plaintiff to them, cannot be retained by them. It is contended in the suit by the plaintiff that the two documents along with other blank papers, in the possession of the defendants, cannot be retained by them any longer because the purpose for which they were executed, i.e. securing a loan on 30-5-2001, no longer subsists. The plaintiff alleges that the defendants have been constantly threatening him in the recent past i.e. in January 2007, that they would create third-party interest in the property and also interfere with possession. The plaintiff in these circumstances apprehends that the defendants actions would interfere with the sale transaction lawfully entered into with his vendee. According to the plaintiff, the cause of action to file the suit arose on various dates in the recent past as and when the defendants threatened him about their intention to misuse the documents in their possession.

5. On the basis of the averments described above, the plaintiff seeks declaration against the defendants and their agents etc that the documents i.e. General Power of Attorney dated 30-5-2001 and the Will, of the same date, are null and void. He also seeks a decree for cancellation of those documents and a permanent injunction against the defendants from using those documents or creating third-party interest, as regards the suit property.

6. Summons in the suit were issued, and served upon the defendants. They were unrepresented, and consequently, were set down ex-parte, on 14th August, 2007. The plaintiff was permitted to lead ex-parte evidence, which he did, through affidavit, dated 24 January, 2007. The said affidavit is almost a verbatim reproduction of averments in the suit.

7. In support of his case, the plaintiff has produced the copy of General Power of Attorney and Will, both dated 30-5-2001, executed in favour of the defendant, as well as copies of the Perpetual Lease deed executed in favour of the original owner, Baljit Singh, dated 20th March, 2001, as well as five other documents executed by Baljit Singh in favour of the plaintiff, on 26th March, 2001, such as Agreement to Sell, Power of Attorney, Will, Indemnity Bond and Possession Letter, in respect of the suit property. Copies of eight other documents, executed by the plaintiff, in respect

of the suit property in favour of his vendee, Ms. Rashmi Jain, being Agreement to Sell, Power of Attorney, Will, Indemnity Bond, Affidavit, Possession letter and Special Power of Attorney, all dated 30th September, 2001, have also been produced. The copy of a receipt dated 30-9-2001 for Rs. 8,00,000/- executed by the plaintiff has been produced. The plaintiff's affidavit speaks of these documents, but they have not been formally exhibited in evidence, as none of the original documents have been produced.

8. Mr. Satyarthi, learned Counsel for the plaintiff, contended that the suit is maintainable, and within the period of limitation. He urged that the relevant provision is Article 59 of the First Schedule to the Limitation Act, 1963 (hereafter "the Act") which corresponds to the old Article 91 of the 1877 Act. Counsel relies on the decision of the Madras High Court in Singarappa v. Talari Sanjivappa ILR 1904 Mad 349. It was contended that the Division Bench of the High Court ruled in similar circumstances, that causes of action in such cases, where the party seeks cancellation of documents, would arise when the plaintiff has an apprehension of injury vis-à-vis the instrument concerned, in respect of which relief is sought. The relevant stage is when the defendants begin to set up title under the document. Counsel points out that in this case too, the cause of action arose sometime in January, 2007, when the defendants held out a threat against the plaintiff, about using the documents in question in relation to the suit property.

9. Learned Counsel submitted that the plaintiff has, on the merits made out a sufficient cause for grant of all reliefs, i.e declaratory, injunctive, as well as cancellation of the document. Being in possession of only copies of the documents, the plaintiff has taken precaution to mark them in the course of evidence.

10. The documents, of which cancellation is sought, and in respect of which injunction too is claimed, were undeniably executed on 30th May, 2001. Section 31 of the Specific Relief Act, 1963, which deals with the remedy of cancellation of documents, reads as follows:

31. When cancellation may be ordered.-(1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

(2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.

The plaintiff has not produced any original document; he also did not seek liberty in accordance with provisions of law, to produce either certified copies, or secondary evidence, in support of his case. All the documents filed are photocopies. The court

cannot therefore look into them.

11. As far as the plaintiff's contentions on merits are concerned, it is discernable that he did not possess any right, title or interest in the property; he claims to be the General Power of Attorney holder of the original allottee/lessor, Shri Baljit Singh. In fact, the said vendor appears to have executed the documents in favour of the plaintiff, within a few days of his securing his interests. The plaintiff, in turn claims to have executed the documents in favour of the defendant barely two months later, in May, 2001. The plaintiff has not produced any document in support of his claim that the transaction with the defendant was only for the purpose of loan, and that the amount borrowed had been repaid. Further, the plaintiff avers to having parted with the property in favour of Ms. Rashmi Jain. She has, however, not been impleaded as a party. The plaintiff also does not explain how, after having passed on his interest in favour of his vendee, he can still maintain the proceeding. Most crucially, the suit is completely vague about the alleged threat to the property, or the circumstances which entitle the plaintiff to the reliefs sought. There is absolutely no objective, documentary evidence in support of the plea that the defendant is threatening the plaintiff. The latter also does not explain how this suit is maintainable, (in relation to the locus standi of the plaintiff) against the defendant, since he has parted with the property. If indeed, the property were threatened, as is alleged, the plaintiff could also have impleaded his vendee; besides he could have led independent evidence about the alleged threat, to substantiate it. His evidence is not only sketchy; it is woefully inadequate, to entitle him to the relief of cancellation of document, declaration and injunction. In view of this lacunae, it is held that the plaintiff does not show how he has a cause of action to file the suit.

12. So far as the question of limitation is concerned, the plaintiff is right when he contends that the period in this regard prescribed, is under Article 59 of the Schedule to the Limitation Act. The courts have taken the view that suits for cancellation are subject to a three years' limitation which begins to run when the facts entitling the plaintiff to have the instrument cancelled or set aside are known to him. In [Prem Singh and Others Vs. Birbal and Others](#), , it was held that:

Article 59 would be attracted when coercion, undue influence, misappropriation or fraud which the plaintiff asserts is required to be proved. Article 59 would apply to the case of such instruments. It would, therefore, apply where a document is prima facie valid. It would not apply only to instruments which are presumptively invalid. (See Unni v. Kunchi Amma and Sheo Shankar Gir v. Ram Shewak Chowdhri)

13. The Supreme Court affirmed and applied the earlier decision in [Ningawwa Vs. Byrappa and Others](#), , stating that:

Ningawwa v. Byrappa this Court held that the fraudulent misrepresentation as regards character of a document is void but fraudulent misrepresentation as regards contents of a document is voidable stating: (SCR p. 801 C-D)

The legal position will be different if there is a fraudulent misrepresentation not merely as to the contents of the document but as to its character. The authorities make a clear distinction between fraudulent misrepresentation as to the character of the document and fraudulent misrepresentation as to the contents thereof. With reference to the former, it has been held that the transaction is void, while in the case of the latter, it is merely voidable.

The point was later driven home, in the following passage, when the court made it clear that nullity or voidability of the instrument had a reference to the conditions which invalidate a contract, i.e. fraud, misrepresentation, coercion, mistake or undue influence, in the following terms:

If a deed was executed by the plaintiff when he was a minor and it was void, he had two options to file a suit to get the property purportedly conveyed thereunder. He could either file the suit within 12 years of the deed or within 3 years of attaining majority. Here, the plaintiff did not either sue within 12 years of the deed or within 3 years of attaining majority. Therefore, the suit was rightly held to be barred by limitation by the trial court.

14. In this case, the plaintiff asserts that the documents were executed in 2001, to secure a loan transaction. The loan, according to him, was returned in 2001 itself. The plaintiff was thus aware at that time itself that the defendants assuming the allegations to be correct - ought to have been returned. This does not by itself suggest that the documents were void, or even voidable; the plaintiff was aware about its true nature. The plaintiff's awareness did not remain suspended as it were, till 2007 when the alleged threat about its misuse arose; the true construction of Article 59 would be that the threat arose for the first time, in 2001, when the loan amount was allegedly returned to the defendant, despite which he held on to the documents. All other reliefs really flow out of the cause of action for the relief of declaration and cancellation. For these reasons, it has to be concluded that the suit is also time barred.

15. In view of the above findings, the plaintiff is not entitled to any relief. The suit is therefore dismissed. No costs.

IA No. 999/2007

Dismissed as infructuous.