

**(2010) 07 DEL CK 0380**

**Delhi High Court**

**Case No:** CS (OS) No. 41 of 2010 and IA No's. 311 and 3308 of 2010

Sh. Vasudev

APPELLANT

Vs

Smt. Geeta Devi and Another

RESPONDENT

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**Date of Decision:** July 30, 2010

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 17, Order 7 Rule 11
- Limitation Act, 1963 - Article 64, 14, 3, 9

**Hon'ble Judges:** V.K. Shali, J

**Bench:** Single Bench

**Advocate:** L.B. Rai, for the Appellant; Ramkishan, for Defendant No. 1 and Ajay Bahl, for Defendant No. 2, for the Respondent

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### **Judgement**

V.K. Shali, J.

This is a suit for possession, declaration, permanent injunction and cancellation of decree dated 8.12.2008 passed by Sh. Y.S. Jonwal, Sub-Judge, First Class, Delhi in CS(OS) No. 1058/86 and a decree dated 24.7.2009 passed by Sh. Naresh Kumar Malhotra, Administrative Civil Judge VIII, Karkardooma Court, Delhi in CS(OS) No. 269/90 (old) and CS(OS) No. 379/2006 (new).

2. Briefly stated the facts of the case are that the plaintiff had allegedly purchased a plot of land bearing No. B-95, situated in Khasra No. 81, Khatauni No. 198/68, situated in the Abadi of Pandav Nagar, Village Patparganj by way of General Power of attorney, agreement to sell, affidavit and Receipt dated 09.1.1984. It is alleged by the plaintiff that the defendant No. 1 is the daughter and defendant No. 2 is the relation of one Pandit Ram Swaroop Sharma, who has already expired and who was working with the plaintiff. It is also alleged by him that at the time when he had purchased the aforesaid piece of land, he was living at G-734, Srinivaspuri, Delhi.

3. The plaintiff has stated that the deceased Ram Swaroop Sharma was helping the plaintiff in construction work. The plaintiff states that he had permitted Ram

Swaroop Sharma to use and look after the said property which he had purchased. It is alleged recently in a suit filed by him bearing No. 182/2009 the defendant No. 1 filed the written statement on 18.6.2009 and he learnt that the temporary structure which was existing on the said piece of land was demolished by the defendant No. 1 in collusion and connivance with the anti-social elements and Goondas and he started raising unauthorized construction.

4. It is further alleged by him that it is during the pendency of these proceedings, he learnt about the factum of two decrees the validity of which is being challenged in the present suit. It is alleged that the defendants in connivance with the other persons had forcefully occupied the plot of the defendant w.e.f 18.6.2009 and hence he has prayed for the aforesaid relief of possession and a decree of cancellation of the two decrees apart from permanent injunction.

5. In view of the averments made in the plaint, on the very first date when the suit came up for hearing, the learned Counsel was directed to satisfy the Court regarding maintainability of the suit on the ground of limitation. This query was raised from the learned Counsel for the plaintiff on account of the fact that in the cause of action clause, the plaintiff himself had stated that it accrued to him for the first time on 9.1.84 when he purchased the plot of land.

6. There is no dispute about the fact that a suit for possession has to be filed within 12 years from the date of accrual of the cause of action while as the suit was filed much after the expiry of the said period of limitation, that is why the notices were issued to the other side and arguments were heard on the question of limitation. It is at this point of time that the plaintiff filed an application under Order 6 Rule 17 CPC bearing IA No. 3308/2010 for amending the plaint so that the date when the cause of action is stated to have accrued to the plaintiff was actually reflected in the plaint was sought to be modified. It was stated that the cause of action accrued on 18.6.2009 when the defendants had taken forcible possession. The reference in this regard was made to para 9 of the plaint.

7. I have heard the learned Counsel for the plaintiff as well as learned Counsel for the defendant.

8. There is no dispute about the fact that even if the plea of limitation is not raised by the defendant, it casts an obligation on the Court to be prima facie satisfied that the suit which is brought up before the Court is within limitation. It was in this context that the learned Counsel for the plaintiff was directed to satisfy the Court with regard to the maintainability of the suit on the ground of limitation.

9. A perusal of averments made in paragraphs 9 and 13 are relevant so as to decide this question. In para 9, the plaintiff has stated that defendant No. 1 in collusion and connivance with other persons has forcibly occupied the plot of the plaintiff on 18.6.2009 for which he has made a complaint to the police as well as to the ACP concerned. In para 13, the plaintiff has stated that the cause of action arose for the

first time on 9.1.84 when the plaintiff had purchased the plot from Jag Ram and he has further stated that the cause of action arose on 18.6.2009 when the defendants dispossessed the plaintiff and started raising the construction and since the cause of action is continuing in his favour he brought this suit for possession.

10. Section 3 of the Limitation Act clearly states that a suit which is beyond the period of limitation, cannot be entertained. Even though this may work out to be a hardship to the plaintiff but there is no question of condonation of delay of filing the suit. The only provision which permits exclusion of time in filing the suit is u/s 14 where time is spent by person bonafide in wrong forum. Section 9 is further relevant which shows that once the period of limitation starts, no subsequent event can stop it. Meaning thereby that once the clock starts ticking the subsequent disability or inability or a subsequent development will not stop the period of limitation.

11. Another Article which will be relevant for the purpose of deciding the question of limitation in the instant case is Article 64. It is laid down that the suit for possession has to be filed within 12 years. The period of Limitation is to be reckoned from the date when the possession of the person against whom a decree is sought becomes adverse to that of the plaintiff. If that be so, then notwithstanding the fact that the plaintiff in the cause of action Clause has intentionally or unintentionally mentioned that the cause of action accrued to him on 09.1.84, the period of limitation would have to be reckoned only from 18.6.2009 when the defendants had taken the forcible possession of the suit premises. There is a definite averment made in this regard by the plaintiff in para 9 of the plaint. It is in this light and because of this fact that I feel it will be too harsh on the plaintiff to reject the suit of the plaintiff on the ground of limitation Under Order 7 Rule 11(d) of the CPC at the threshold. Accordingly, the plaint is prima facie held to be within limitation.

12. The plaintiff has also filed an application under Order 6 Rule 17 CPC for amending the cause of action Clause in this regard which I feel ought not to have been considered without first seeing as to whether the suit as framed is maintainable or not? The application for seeking amendment ought to be considered only once the plaintiff prima facie satisfies the Court that the suit as framed is maintainable.

13. In the present case, I am satisfied that prima facie the period of limitation will have to be reckoned only from 19.6.2009 and not from 9.1.1984. I accordingly, hold that the suit of the plaintiff is within limitation. So far as the amendment to the plaint is concerned as the suit is still at the threshold, the plaintiff is permitted to amend the suit.

14. Amended plaint be filed within two weeks.

15. Accordingly, summons be issued to the defendants on the amended plaint.