



from the property. Accordingly, it is stated that the deceased could not have made a bequest by way of a will in respect of the suit property. It is urged is that prior to execution of the sale deeds dated 27.8.1987 permissions had been obtained from the income tax department and earlier on, the deceased had entered into a collaboration agreement on behalf of the trust with M/s. Builder Combine vide collaboration agreement dated 15.4.1979. That under the said agreement sum of Rs.7.5 lacs was paid by M/s. Builder Combine to the trust.

7. Fourth ground urged is that the suit is barred by limitation.

8. The next ground urged is that the cause of action hinges on the will dated 6.7.1999 which refers to 3 khasras, viz., 91, 92 and 93, but the relief prayed is only qua khasras 91 and 92. It is further stated that while referring to khasra Nos.91 and 92, plaintiffs have concealed the facts that defendants 1 to 5 are in possession of land comprised in khasra No.91 and half portion of khasra No.92 and that balance half land comprised in khasra No.92 and entire khasra No.93 is in possession of other persons or roads have come up thereon. That these third persons have purchased different portions of land comprised in part khasra No.92 and khasra No.93 from the trust.

9. Referring to certain criminal proceedings before a learned Metropolitan Magistrate it is stated that crime branch has filed a report on 9.7.2003 to the effect that the defendants were bona fide purchasers and that the will relied upon is a fabricated document.

10. Case of the plaintiff is that land comprised in khasra Nos.91, 92 and 93 in the revenue estate of village Masjid Moth belonged to late Rajmata Kamlendumati Shah who executed a will on 6.6.1999 which was registered on 6.7.1999. Plaintiff claims to be the beneficiary under the will. That when the plaintiff sought mutation in the revenue records in her favour as per the will, defendants filed objections on 12.10.2000 opposing the mutation and claiming ownership under the sale deeds dated 27.8.1987.

11. It is pleaded by the plaintiff that no consideration was received by the deceased under the sale deeds and it is wrongly mentioned that under the sale deeds sum of Rs.8.5 lacs and Rs.6 lacs respectively was received as sale consideration.

12. It is further the case of the plaintiff that in the sale deeds it is wrongly mentioned that Rs.4.5 lacs and Rs.3 lacs respectively were received by assignment of advance received from M/s.Builder Combine and that balance sale consideration was received in cash. It is stated that no cash was received.

13. Cause of action pleaded is that on 12.10.2000 when defendants filed objections before the Revenue Assistant challenging the will and claiming a right under the sale deeds, plaintiff had to obtain certified copy of the sale deeds from the office of the sub-Registrar and only when certified copies of the sale deeds were obtained was the plaintiff in a position to lay a challenge to the same.

14. It is settled law that to see whether the plaint discloses a cause of action, defence has not to be seen. Only averments made in the plaint have to be considered. Treating all averments made as correct, it has to be seen, whether, if treated as correct, the plaint discloses a cause of action or not.

15. Thus, issues pertaining to challenge to the will, medical record of the deceased, her mental and physical health, place of residence, vis-a-vis place of registration of the will have to await a trial. Plaint cannot be rejected predicated on said defences. Further, what is the effect of suppression, if any, would have to be seen after trial and on suppression being established.

16. As held in various judicial pronouncements of this Court for Hindus, in Delhi, it is not necessary to have a will probated before laying a claim thereunder. (See AIR 1968 Punjab 108 Behari Lal Vs. Karam Chand).

17. Whether the deceased divested herself of ownership of the suit properties and whether she vested the same in a trust, is a matter of evidence to be established by the defendant. Plaint cannot be thrown out by treating that the deceased was not the owner of the suit properties, having divested herself from ownership.

18. Plaint challenges the sale deeds dated 27.8.1987. As per the plaintiff, knowledge was gained by the plaintiff of the existence of the sale deeds when defendants relied upon the sale deeds before the revenue assistant by filing objections on 12.10.2000.

19. Shri Harish Malhotra, Sr. Adv. for the defendants urged that though not pleaded in the application, suit was barred by limitation inasmuch as it has been filed on 30.10.2003 and cause of action accrued on 12.10.2000.

20. From the scrutiny report dated 11.9.2003 of the registry it is apparent that the suit was instituted, if not prior, at least on 11.9.2003. Unfortunately, the filing counter has not put a stamp at the rear of the Memo of Parties showing the date of filing. Treating 12.10.2000 as the date when plaintiff learnt about the sale deeds, challenge had to be within 3 years. Limitation commenced on 13.10.2000. The suit filed on 11.9.2003 has to be within limitation. Further, it is stated in the plaint that when objections were received before the Revenue Assistant on 12.10.2000, plaintiff applied for and obtained certified copies of the sale deeds which were made available in July 2002. Thus, according to the plaintiff, time spent in obtaining certified copies of the sale deeds relied upon has to be taken into account and limitation would commence when copies of the sale deeds were available to the plaintiff.

21. From the plaint it is evident that plaintiff gained knowledge of the sale deeds on 12.10.2000 when the defendants filed objections before the revenue assistant. Plaintiff have not stated that along with the objections, defendants furnished copies of the sale deeds relied upon.

22. To have filed the suit, plaintiff had to obtain copies of the sale deeds for only after perusing the same could the plaintiff make meaningful averment questioning the sale deeds.

23. Defendants cannot seek rejection of the plaint on the ground that the will refers to 3 khasra numbers but declaration is sought towards 2 khasra numbers only, for the reason declaration sought is pertaining to 2 sale deeds dated 27.8.1987.

24. Prayer made in the suit is as under:-

“(i) Pass decree of declaration in favour of the plaintiff and against the defendants thereby declaring that the alleged sale deeds dated 27th day of August, 1987 by Late Rajmata Kamlendumati Shah, President Board of Trustees of Raja Kirti Shah Trust in favour of the Defendants and registered as Document No.6185 in Addl. Book No.1, Vol. No.5922 from Pages 120-129 dated 27.8.1987 and Document no.6986 in Addl. Book No.1, vol. No.5922 from Pages 130-143 are illegal and null and void.

(ii) Pass a decree of perpetual injunction restraining the Defendants their servants, agents, representatives, assigns, or any other person or persons from claiming to be the owners of the suit property and further restraining them from dealing in, selling, dispossessing, transferring, alienating or creating any third party interest in the suit property or any part thereof.

(iii) Pass a decree of possession in favour of the plaintiff and against the Defendants their servants, agents, representatives, assigns, or any other person or persons from handing over the physical, vacant, peaceful possession of the suit property to the Plaintiff.

(iv) Pass any other such order as this Hon'ble Court may deem fit and proper in the interests of justice.”

25. Questioning the sale deeds, plaintiff has stated that no consideration passed. The issue needs adjudication post trial.

26. IA No.1617/2004 is accordingly dismissed.

27. There shall be no orders as to costs.

Sd/-

PRADEEP NANDRAJOG, J.