

: ORDER BELOW EXH. 1 IN
Spl.C.S. NO. 840/2014 :

1] Defendants have moved an application Exh.18 for rejection of the plaint under Order 7 Rule 11(d) of the Code of Civil Procedure (hereinafter referred to as 'CPC') for rejection of the plaint, being barred by law of limitation. According to them, the suit is based on Development Agreement and Power of Attorney of 1996, executed between themselves and plaintiffs, which were terminated and revoked by the defendants by notice, dt. 10/03/1999. However, the suit filed on 24/06/2014 is barred by law of limitation. Suit is cleverly drafted and plaintiffs have avoided the reliefs of declaration. They prayed accordingly.

2] Plaintiffs have resisted the claim of the defendants by filing reply at Exh.21. According to them, issue of limitation is mixed question of law and fact therefore, cannot be decided at the initial stage of the suit. Issues involved in the present suit are required to be adjudicated by giving opportunity of giving evidence to the plaintiffs. The Development Agreement as well as Power of Attorney are valid and subsisting. In such circumstances, they prayed for rejection of the application.

3] Heard both sides at great length. Learned advocate for defendants placed reliance on the following Judgment :

Passed by the Hon'ble Supreme Court of India in the case of **Hardesh Ores Pvt. Ltd., Sociedade De Fomento Industrial Pvt. Ltd. Vs. Hede And Company, Laws (SC) 2007-5-184.**

: 2 :

As against this, learned advocate for the plaintiffs placed reliance on the following Judgments :

1. Passed by the Hon'ble Bombay High Court in the case of Kisanlal B. Kalda Vs. Harischandra B. Santre, 2014(5) Bom.C.R. 115.
2. Passed by the Hon'ble Supreme Court of India in the case of C. Natrajan Vs. Ashim Bai & Anr., AIR 2008 Supreme Court 363.
3. Passed by the Hon'ble Bombay High Court in the case of Sushilabai Bomenshaw Byramji Vs. Kamlarukh DPR Cassad through L.Rs. and another, 2014 (3) Mh.L.J.
4. Passed by the Hon'ble Punjab & Haryana High Court in the case of Smt. Lajwant Kaur and another Vs. Abnashi Singh and others, AIR 1979 Punjab & Haryana 268.

4] I have gone through the rival contentions of the parties, relevant provisions of law, Judgments cited supra and record. Following points arise for my determination and I have recorded my findings thereon for the reasons stated below :

POINTS

FINDINGS

- | | | |
|----|---|------------------------|
| 1] | Whether the plaint is liable to be rejected under Order 7 Rule 11(d) of the Code of Civil Procedure as barred by law of limitation? | .. Yes. |
| 2] | What order? | .. As per final order. |

: REASONS :

5] It is settled principle of law, as also observed by Hon'ble Bombay High Court in Sushilabai's case cited supra, that while adjudicating the application under Order 7 Rule 11 of CPC, only and only averments made in the plaint are to be looked into being material and germane and nothing else. As such, I have to see the averments made in the plaint.

6] It is further settled principle of law that if from the averments made in the plaint, it appears that the suit of the plaintiff is barred by law of limitation then plaint can be rejected by taking recourse of the provisions of Order 7 Rule 11(d) of the Code of Civil Procedure.

It is also settled law that if considering the facts and circumstances of a case, issue of limitation appears to be mixed question of law and facts then in that case, the Court shall decide the same by giving opportunity of adducing evidence to the parties.

I have to keep in mind the above principles of law while adjudicating the application filed by the defendant.

7] According to the plaintiffs, defendants are having right and title over the suit property described in the schedule attached with the plaint Exh.1. On 09/09/1996, written agreement for development came to be executed between plaintiffs and defendants wherein, plaintiffs agreed to develop the suit property for consideration of Rs. 50,000/- in cash and two flats. Consequently, on same day, Power of Attorney was executed by the defendants in favour of plaintiff No.2.

Both the above documents are unregistered and plaintiffs have made demand time to time to register the same but defendants deliberately avoided the same.

8] It is further the case of the plaintiffs that in pursuance to the Development Agreement and Power of Attorney executed by defendants, they started work of development, i.e., acquiring sanction from local authority for development on the suit land from 1996 till the year 2013 as per the Terms and Conditions of the agreement. They also settled all claims with tenants in the suit property, though it was absolutely responsibility of defendants. Plaintiffs also obtained commencement certificate from the Office of Pune Municipal Corporation on 03/05/1999. As such, they were ready and willing to perform their part of contract.

9] It is further the case of the plaintiffs that they shocked to know that on 11/03/1999, defendants sent notice through advocate, made illegal demands and false declaration about revocation of Development Agreement and Power of Attorney. Further, plaintiffs have replied that notice on 05/08/1999 and shown their willingness and readiness to perform their part of contract.

10] It is also the case of the plaintiffs that they came to know that defendants are intending to sell the suit property to third person without disclosing the fact of execution of Development Agreement and Power of Attorney in question. Therefore, plaintiffs have published public notice through advocate on 04/06/2014 in

daily Prabhat. However, vide reply notice dt. 13/06/2014, defendants submitted that the Development Agreement and Power of Attorney were already terminated by them and therefore, they have executed Power of Attorney in favour of Mr. Ganesh Hingmire.

11] In such circumstances, according to the plaintiffs, defendants invade the Terms and Conditions of the Development Agreement and Power of Attorney. Hence, plaintiffs are entitled for recovering damages and compensation from them. They have invested huge amount for the development of the suit property. Therefore, defendants are required to be restrained from creating third party interest in the suit property.

As per particulars of claim in plaint Para- 16, plaintiffs have claimed compensation / damages, notice fees and ancillary expenses to the tune of rupees forty five lacs.

As per Para-17 of the plaint, cause of action for the suit arose when plaintiffs came to know that defendants are trying to create third party interest in the suit property and on 13/06/2014, when they came to know that defendants are invading the Terms and Conditions of the Development Agreement.

As per Para-19 of the plaint, the suit being for declaration and injunction, it is within the period of limitation as per Article 54 of the Limitation Act.

12] On the background of above facts, the plaintiffs have prayed for a) injunction restraining the defendants from creating third party interest b) decree of compensation of Rs. 45,00,000/- c) direction to the defendants to register the Development Agreement and Power of Attorney in question with the Office of Sub Registrar.

13] From the averments made in the plaint, it is clear that the Development Agreement and irrevocable Power of Attorney came to be executed by defendants in favour of plaintiffs on 09/09/1996 for consideration of Rs. 50,000/- in cash and two flats in kind. Both these documents are unregistered. From the averments made in the plaint itself, by notice dt.11/03/1999, defendants have terminated / revoked the said Development Agreement and Power of Attorney. Copy of that notice is produced on record with list Exh. 3 /4. Perusal thereof would reveal that by stating various circumstances in the said notice, defendants have terminated and revoked the Development Agreement and Power of Attorney in question and called upon the plaintiffs to pay them Rs. 37,000/- by way of compensation within 15 days.

As per averments made in the plaint itself on 05/08/1999, plaintiffs have replied the said notice issued by defendants. Copy thereof is also produced on record with list Exh.3/5. Perusal thereof would reveal that by the said notice, plaintiffs have called upon the defendants to perform the terms of Development Agreement in question, failing which, suit for specific performance would be filed in the Court of Law. Plaintiffs have also claimed Rs. 5,00,000/- for damaging the good will in the market.

14] As stated above, Development Agreement was executed on 09/09/1996. As per the recitals of that Development Agreement, possession of the two flats agreed to be given within 24 months, after getting commencement certificate from the Pune Municipal Corporation. According to plaintiffs, commencement certificate was obtained by them from the Corporation on

03/05/1999. As such, development work was to be completed on or before 03/05/2001.

Defendants have issued notice on 10/03/1999 thereby informed the plaintiffs that for want of performances on their part, the Development Agreement and Power of Attorney are terminated and revoked.

Date of notice is important. It is 10/03/1999. From the averments in the plaint itself, it appears that plaintiffs have obtained commencement certificate from the Office of Pune Municipal Corporation on 03/05/1999, i.e., after the issuance of the above notice by the defendants.

Further, there is no averments on the part of plaintiffs about the stages of development work done by them. As against this, according to them, on 04/06/2014, they published public notice in daily Prabhat. Copy thereof is produced on record with list Exh.3/3. Perusal thereof would reveal that according to the plaintiffs, they were trying to develop the suit property and required plans are submitted to the Office of Pune Municipal Corporation. That statement is made on 04/06/2014, by way of public notice. This itself shows that no effective work of development was done by the plaintiffs on the suit property.

Plaint is absolutely silent about the correspondence between the parties in between 05/08/1999, when plaintiffs issued reply notice to the defendants and 04/06/2014, when plaintiffs published public notice in daily Prabhat.

15] Reliefs claimed by the plaintiffs in the present suit are required to be considered. Main relief is for compensation of Rs. 45

lacs regarding breach of contract by the defendants. As stated above, by notice dt.10/03/99, itself defendants have disclosed their mind that they were not ready and willing to continue with the Development Agreement and Power of Attorney, instead terminated and revoked the same. Whether by that notice, such Development Agreement and Power of Attorney can be legally terminated or not, is not the point to be looked into at this stage. However, at this stage, we are concerned about the time when cause of action for the plaintiffs first arose for filing the present suit.

As per Article 55 of the Indian Limitation Act, for compensation for the breach of any contract, the period of limitation is three years from the date when the contract is broken or when the breach in respect of which suit is instituted, occurs or when ceases. By notice, dt. 10/03/1999, itself defendants have informed the plaintiffs about termination and revocation of Development Agreement and Power of Attorney. As such, as per Article 55 of the Limitation Act, period of three years was commenced for filing suit for compensation from the receipt of that notice by the plaintiffs. However, the present suit is filed on 24/06/2014, is clearly barred by the Law of Limitation.

16] The next relief sought by the plaintiffs is directions to the plaintiffs for registration of Development Agreement and Power of Attorney. Actually, such relief is barred by Sections 23 and 25 of the Registration Act itself. Still, it can be inferred from that relief that plaintiffs are in fact seeking declaration that the said agreement and Power of Attorney still subsist and specific performance thereof. If so, then article 54 of the Limitation Act will

come into picture. As per that provision, for a suit for specific performance of a contract, period of limitation is three years from the date fixed for the performance or in absence of such date, when the plaintiffs have notice that performance is refused.

As stated above, as per the Development Agreement, within 24 months from the date of commencement certificate issued by the Corporation, two flats agreed to be given to the defendants by the plaintiffs. The date of commencement certificate is 03/05/1999. 24 months completed on 03/05/2001.

Assuming that no specific date of performance is there in the Development Agreement, then in that case, by notice, dt. 10/03/1999 itself, defendants have refused to perform their part of Development Agreement and Power of Attorney. As such, suit was required to be filed on or before 10/03/2002. However, it is filed on 24/06/2014. Therefore, also it is hopelessly barred by Law of limitation. It is pertinent to note here that by reply notice dt. 05/08/1999 itself, plaintiffs cleared their intention of filing suit for specific performance. Still, they failed to do so within the prescribed period.

17] So far as relief of declaration that Development Agreement and Power of Attorney, still subsists, as per article 58 of the Limitation Act, for obtaining such declaration, period of limitation is prescribed as three years from the date when right to sue first accrues. Again right to sue first accrues to the plaintiffs, after receipt of notice, dt. 10/03/1999 issued by the defendants. Therefore, also the suit which is filed in the year 2014, is barred by law of limitation.

18] So far as relief of permanent injunction is concerned, according to the plaintiffs, as defendants made breach of contract, they are entitled for damages and compensation from them. Further, they have invested huge amount for the development of the suit property, therefore, defendants are required to be restrained from creating third party interest in the suit property. Therefore, the relief of injunction appears to be based on the relief of compensation. When relief of compensation itself is barred by the Law of Limitation, relief of injunction will not suffer.

For the relief of injunction, according to the plaintiffs, the cause of action arise when they came to know that defendants are trying to create third party interest in the suit property. However, when by notice, dt. 10/03/1999 itself, defendants have terminated and revoked the Development Agreement and Power of Attorney then only plaintiffs got knowledge that defendants may take help of third party for development over the suit property. Even otherwise also, mere suit for permanent injunction on the basis of Development Agreement and Power of Attorney executed in the year 1996, cannot be said to be tenable, after about 17 years.

19] So, from the averments made in the plaint itself, it is apparent that the claim of the plaintiffs is barred by Law of limitation. The ratio laid down by the Hon'ble Supreme Court of Indian in the case of Hardesh's case cited supra, is squarely applicable to the case in hand and defendants can take benefit thereof.

As against this, the facts and circumstances involved in the C. Natarajan's case cited supra, relied upon by the plaintiffs, are

altogether different. In that case, issue of identification of the suit land was involved. Further, issue of title and possession was also involved. Moreover, boundary dispute was also there. In that context, it was held that in such type of suits, issue of limitation are required to be adjudicated at the final hearing. Therefore, plaintiffs cannot take benefit from the ratio of that case as well other cases cited supra, as facts and circumstances therein are together different.

20] From the above discussion, when from the averments made in the plaint itself, it is clear that the suit is barred by Law of Limitation, this Court is empowered to take recourse of provisions of Order 7 Rule 11(d) of the Code of Civil Procedure and plaint can be rejected. Hence, by allowing the application Exh.18, I proceed to pass the following order :

: ORDER :

1. Plaint is rejected.
2. No order as to costs.
3. Decree be drawn up accordingly.

PUNE.
DATE : 27/11/2014.

(V. B. BOHRA)
7th Addl. Judge, Small Causes
Court & C.J.S.D., Pune.

I affirm that the contents of this PDF file Judgment are same word for word as per original Judgment.

Name of the Steno : V.A. Endgallu. (H.G)

Name of the Court : V.B.Bohra,
7th Addl. Small Causes Court and
Jt. Civil Judge, Sr.Dn.Pune

Date : 27/11/2014.

Judgment signed by Presiding Officer on : 28/11/2014.

Judgment uploaded on : 28/11/2014.