

are concerned. In the said suit, an application under Order VII Rule 11 C.P.C. was filed by the defendant-appellant which was allowed by the trial court on 22.11.2022. Consequently, the plaint was rejected holding the suit as barred by limitation by invoking Order VII Rule 11(d) CPC. Against the order of trial court, Civil Appeal No.67 of 2022 (Anant Prasad Singh v. Shrivats Goswami and another) was filed by the plaintiff-respondents which has been allowed by the order impugned dated 06.04.2023 and the matter has been remanded to the trial court to re-register the suit, invite written statement and other objections from the defendants on all aspects including limitation, to frame additional issue on limitation and take a decision on all the issues after leading evidence.

4. Assailing the order impugned, Shri Tarun Agrawal, learned counsel for the appellant submits that one Girija Devi executed a gift deed dated 25.05.1968 in favour of Vishnu Priya who, later on, executed another gift deed dated 17.10.1987 registered on 15.01.1988 in favour of Shri Purushottam Lal Goswami, i.e. father of the defendant-appellant. He died on 21.02.2017 and the suit in question was filed on 07.02.2022. Reading out the plaint averments especially those contained in paragraph 21 thereof, it is contended that the plaintiff deliberately concealed the date of knowledge of the registered documents and admitted in the plaint itself that earlier attempt of getting the name of the defendant mutated in the revenue records was made ineffective by the plaintiff. He, therefore, submits that by concealing the date about knowledge of registered instruments in the entire plaint, the plaintiff committed breach of the mandatory provisions of Order VI Rule 4 CPC,

inasmuch as, the limitation to institute a suit of this nature would be governed by Article 58 of Part III of the Limitation Act, 1963 (hereinafter referred to as 'the Act of 1963') which prescribes a period of three years of limitation from the date when the right to sue first accrues. He submits that principally the case of the plaintiff defending rejection of the plaint as barred by limitation is based upon subsequent revealing of fraud or concealment, therefore, in view of Section 17(1)(b) of the Act of 1963, knowledge of such concealment of fraud, when read with Order VII Rule 4 CPC, the plaintiff was bound to disclose the date of knowledge in the plaint and, in absence thereof, the plaint was liable to be rejected. In support of his submissions, he has placed reliance upon the judgment of Hon'ble Supreme Court in **Saranpal Kaur Anand v. Praduman Singh Chandhok, (2022) 8 S.C.C. 401**; another judgment of Delhi High Court in **Smt. Razia Begum v. Delhi Development Authority & ors., 2014 SCC OnLine Del 4628** and judgment of this Court in **Dr. Chandra Mohan Singhal and others v. State of U.P., 2002 (4) AWC 2686**.

5. *Per contra*, Shri Rahul Sripat, learned Senior Counsel refers to 'paragraph 14' of the plaint and submits that previous proceedings of mutation were not based upon registered instruments, declaration whereabouts has been claimed in the suit, rather the mutation was claimed on the basis of long possession only and it is, for the first time, that the plaintiff received a notice dated 29.12.2021 issued by the concerned Municipal Corporation whereupon he came to know about the registered gift deeds. He submits that the said notice was filed alongwith list of documents before the trial court and, in the facts of the case, the appellate court has not

erred in treating the question of limitation as a “mixed question fact and law” and has rightly remanded the matter to the trial court for deciding all the issues including the issue of limitation.

6. Having heard learned counsel for the parties, first of all, the Court deals with the provisions of Order VI Rule 4 C.P.C. pressed into service. The same reads as under:-

Order VI Rule 4

“Particulars to be given where necessary.- In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading.”

7. Section 17 of the Act of 1963 also needs reproduction:-

“17. Effect of fraud or mistake.-

(1) Where, in the case of any suit or application for which a period of limitation is prescribed by this Act,-

(b). the knowledge of the right or title on which a suit or application is founded is concealed by the fraud of any such person as aforesaid; or”

8. A conjoint reading of both the aforesaid provisions would show that when the plea of subsequent acquisition of knowledge or revealing of concealment or fraud is taken by the plaintiff so as to bring his suit within period of limitation, it is incumbent for him to state in the plaint as to when he acquired knowledge. Order VI Rule 4 C.P.C. provides that dates and items

in relation to the plea of misrepresentation, fraud, breach of trust, wilful default or undue influence shall be mentioned in the plaint.

9. The judgment of **Saranpal Kaur Anand** (supra), had arisen from rejection of plaint on the ground of limitation. Though the Hon’ble Supreme Court has referred the matter to the Larger Bench, however, it appears from ‘paragraph 61’ of the judgment that it was on the issue as to whether the question of limitation can be decided on the preliminary issue in terms of Order XIV Rule 2(2) C.P.C. There being no quarrel with the proposition laid down in the cited judgment, however, in the peculiar facts of this case when the plaintiff has come up with a clear stand that earlier proceedings of mutation were not based upon gift deeds and, for the first time, the plaintiff acquired knowledge about the rights claimed by the defendant on the basis of the gift deed(s) pursuant to notice issued by the Municipal Corporation in the year 2021, such an aspect has a material bearing on the issue of limitation. Though it is true that in ‘paragraph 14’ of the plaint, the date of acquisition of knowledge about the gift deed has not been disclosed, however, receipt of notice issued by Nagar Nigam concerning mutation proceedings and words “conspiracy etc.” are clearly mentioned. Under such circumstances, even if, a date of receipt of notice has been missed from being mentioned in the plaint, the same does not affect the plaintiff’s right to seek amendment in the plaint to that extent when the notice is already on record. This Court, further, does not find any quarrel between the provisions of Order VI Rule 4 CPC and Order VI Rule 17 CPC and no such authority has been placed before the Court which restricts the right of the plaintiff to subsequently amend his plaint,

even if, the date about revealing of concealment or fraud is missed from being mentioned in the plaint initially filed but the document is before the Court on the date of consideration of application under Order VII Rule 11 CPC.

10. The Delhi High Court in **Smt. Razia Begum** (supra), while discussing the aspect of rejection of plaint under Order VII Rule 11 CPC, has observed that for the said purpose, the Court has to look at the averments made in the plaint by taking the same as correct on its face value as also the documents filed in support thereof and at so many places in the judgment, it has been emphasized that the entire plaint must be read as a whole. In the instant case, the notice dated 29.12.2021 issued by the concerned Municipal Corporation has already been brought on record before the trial court by the plaintiff himself. The entire plaint, when read as a whole alongwith the said notice, would give rise to an arguable issue of limitation vis-a-vis actual acquisition of knowledge to the plaintiff about the disputed gift deed(s). Therefore, the appellant does not get any advantage from the decision of **Smt. Razia Begum** (supra) and, infact, the same would apply against him in the facts of the present case.

11. The judgment in **Dr. Chandra Mohan Singhal and others** (supra) arises out of a case where the particulars regarding alleged fraud were not disclosed in the plaint and this Court, in paragraph 25 of the report, observed that on perusal of the plaint of the suit, no details of fraud were found to be given nor was it mentioned as to who had committed the fraud. The Court, accordingly, observed that the plaint was bad under Order VI Rule 4 CPC and, hence, was liable to be rejected. The facts of the instant case are,

however, different and the only issue involved before this Court is as to whether on the statement of facts contained by reading the entire plaint read with the notice dated 29.12.2021, it can be said at this stage that the provisions of Order VI Rule 4 CPC would apply in strict sense so as to reject the plaint at its threshold. In view of the above discussion, this Court cannot read the judgment of **Dr. Chandra Mohan Singhal and others** (supra) in favour of the appellant.

12. At the same time, it is also observed that if the defendant-appellant successfully establishes during the course of trial that previous proceedings of mutation were based upon disputed gift deeds and that the plaintiff had knowledge about such proceedings, certainly, the suit would be barred by limitation but, at this stage, when the evidence is yet to be led on all the disputed questions of fact and law, question of limitation cannot be said to be a pure question of law so as to justify rejection of plaint at its threshold.

13. In view of the above, this Court is convinced that the first appellate court was justified in leaving the question of limitation to be decided as a mixed question of fact and law after leading the evidence.

14. Consequently, the appeal fails and is, accordingly, **dismissed**.

15. However, it is clarified that the findings/observations recorded in order dated 22.11.2022 passed by the trial court or the order dated 06.04.2023 passed by the first appellate court shall not be treated as final and would not affect the ultimate decision of the Court on the question of limitation.
