



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Civil Suit 684 of 2009

**NAVAL KISHORE BHALLA ::: 1ST
PLAINTIFF**

**KEVAL KISHORE BHALLA ::: 2ND
PLAINTIFF**

RAMESH CHANDER BHALLA ::: 3RD PLAINTIFF

**ASHOK KUMAR BHALLA ::: 4TH
PLAINTIFF**

**BHALLA INVESTMENTS LTD. ::: 5TH
PLAINTIFF**

- VERSUS -

JUGAL KISHORE BHALLA ::: DEFENDANT/APPLICANT

R U L I N G

1. The application before the court is dated **25th September 2012**. It seeks orders that the Plaintiff's suit be struck out with costs to the Defendant.
2. The application is filed under Section 1A, 1B and 3A of the Civil Procedure Rules, Order 2 Rules 15 (1) (b) (d), Order 51 Rule 1, and all other enabling provisions of the Law. It is premised on the grounds that:-
 - 1) The Defendant has been registered owner of the suit property known as L.R. Number 209/7002 since 1971, an interrupted period of ownership amounting to 42 years under the name Jugal Kishore Bhalla trading as Parklands Fuel Stores.
 - 2) The said property was transferred to him by his late father, Banarsi Dass Bhalla in consideration of natural love and affection on 6th November 1971.
 - 3) The suit by the Plaintiff's therefore offends the statute of Limitation of Actions, is frivolous, vexatious, and an abuse of the process of this Honorable Court.
3. The application is opposed by Affidavit by **JUGAL BHALLA** dated **25th September 2012** with

annextures.

4. The application is opposed vide grounds of opposition dated and filed in court on 15th October 2012.

5. The Applicant filed List of Authorities as did the Defendant and parties orally submitted before me this morning (3rd May 2013).

6. I will not go into the history of the suit or the application as that is clearly set out in the pleadings. What I need to note is that this application comes at a time when the hearing of the main suit is underway. That, however, does not prejudice the Applicant's right to bring the current application.

7. I have carefully considered the submissions of the parties. In my view, striking out of a suit is a grave matter which the court can resort to only in the clearest of the cases. This court has a very wide discretion in striking out pleadings. That discretion must however be exercised judiciously and with the end of justice in mind. In the current application there are good reasons why I must reject the application.

i. Whether the suit is statutory barred or not is an important consideration both in the current application and in the main suit. The issue is relevant in both forums. However, the application hearing forum is the short cut to that determination while the hearing of the suit is the long route towards the same.

Shortcut proceedings normally have the appearance that justice is not substantially being determined.

I am of the view that since the hearing of the main suit is currently underway, the determination of whether or not the suit is time barred should be determined within the framework of the hearing rather than through this application. This has the benefit of hearing *viva voce* evidence from the parties, as well as saving the precious time of the court.

ii. In a Ruling delivered by Lady Justice M.G. Mugo on 21st December 2011 on the same file touching on some aspects of the case including fraud and limitation of time, the Judge had this to say at page 8 of the Ruling:-

“It is clear from the above that ultimately the suit, if not settled by mutual consent will have to be determined by the tendering evidence in order to prove the trust, and fraud, pleaded by the Plaintiff/applicant and the gift *inter vivos* claimed the by the Defendant/Respondent over L.R. No. 209/7002. . . . The consideration to be made are not whether fraud has been proved or not or whether the property is registered in the name of the defendant. These are matters for the trial court. So is the issue of whether the Plaintiff's claim is statute barred.”

It is clear to me that the issues surrounding the allegations of statutory limitation can best be determined through a hearing and *viva voce* procedure rather than through affidavit evidence.

iii. The dispute between the parties is so serious despite the fact that they are one family. Under these circumstances it is important to allow parties to prosecute and defend their case through a normal suit rather than through a summary procedure, and in a transparent, clear and understandable process.

iv. I have considered other grounds provided by both the Applicant sand the Respondents.

8. In careful consideration thereof, I am not satisfied that this is a clear case in which I can strike out a suit. I actually believe that the current application is not only an afterthought but is also an abuse of the process of this court more so considering that what is meant to be achieved by this application is also very much achievable through the full trial which is currently underway.

9. For the above reasons I herewith dismiss the Notice of Motion dated 25th September 2012. Costs shall be for the Respondent.

It is so ordered.

DATED, READ AND DELIVERED AT NAIROBI

THIS 3RD DAY OF MAY 2013

E. K. O. OGOLA
JUDGE

PRESENT:

Nagpal & Kamamo for the Plaintiffs
Karungo for the Defendant/Applicant
Teresia – Court Clerk