Mukund Bhavan Trust vs Shrimant Chhatrapati Udayan Raje ... on 20 December, 2024

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REPORTAB

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 14807 OF 2024
(Arising out of SLP (C) No.18977 of 2016)

SHRI MUKUND BHAVAN TRUST AND ORS ... APPELLAN

VERSUS

SHRIMANT CHHATRAPATI UDAYAN RAJE
PRATAPSINH MAHARAJ BHONSLE AND ANOTHER ... RESPONDE

JUDGMENT

R. MAHADEVAN, J.

1. Leave granted.

2. This appeal is filed by the Defendant No.1 viz., Shri Mukund Bhavan Trust and its trustees, against the Order dated 26th April 2016 passed by the High Court of Judicature at Bombay1 in the Civil Revision Application No.904 of 2014, whereby the High Court dismissed the said application preferred by the appellants challenging the Order dated 29th April 2009 passed by the 7th Joint Civil Judge, Senior Division, Pune 2. By the said order, the trial Court rejected the application filed by the appellants under 1 Hereinafter referred to as "the High Court" 2 Hereinafter referred to as "the trial Court" Order VII Rule 11(d) of the Civil Procedure Code, 1908 3 for rejection of plaint being barred by limitation.

3. The Respondent No.1 / plaintiff filed a Special Civil Suit No.133 of 2009 against the appellants and the State of Maharashtra, inter alia for the following reliefs:

> (a) to declare that the plaintiff is the absolute owner of the suit lands more particularly described in schedule of the plaint;
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> (b) to declare that other than the Plaintiff, no other person is entitled to deal with, alienate and create any third-party interest in respect of suit lands;

(c) to restrain the appellants / defendants permanently, from in any manner holding themselves as owners or representing themselves as owners of the said suit lands;

(d) to declare that the compromise decrees passed in Special Civil Suit Nos.152/1951 and 1622/1988 and Civil Appeal No.787/2001, Pune, are void ab-initio, null and void and to set aside the same;

(e) to direct the appellants / defendants to vacate and hand over the possession of the suit lands to the Plaintiff.

4. Pending the aforesaid suit, the appellants took out an application under Order VII Rule 11(d) of CPC r/w Articles 58, 59 and 65 of the Limitation Act, 1963, seeking rejection of the plaint as the reliefs sought in the suit were barred by limitation. The said application was seriously resisted by the Respondent No.1 / plaintiff by stating inter alia 3 For short, "the CPC" that the issue of limitation is a mixed question of facts and law and it has to be adjudicated only in the trial.

5. The trial Court by order dated 12.10.2009, rejected the aforesaid application filed by the appellants under Order VII Rule 11(d) of CPC. Aggrieved by the same, the appellants preferred Civil Revision Application No.731 of 2009 before the High Court, which set aside the order dated 12.10.2009 and remanded the matter to the trial Court for considering the application filed under Order VII Rule 11(d) of CPC afresh.

6. After remand, the trial Court vide order dated 29.04.2014, rejected the application filed by the appellants under Order VII Rule 11(d) of CPC, observing inter alia that the issue of limitation is a mixed question of law and facts, for which, the parties will have to lead evidence. Challenging the same, the appellants preferred Civil Revision Application No. 904 of 2014, which was dismissed by the High Court, by order dated 26.04.2016 impugned in this appeal.

7. The learned counsel for the appellants, at the outset, submitted that on a bare perusal of the averments made in the plaint disclosed that the reliefs sought in the plaint were barred by limitation. However, the High Court erroneously dismissed the Civil Revision Application on the ground that the question of whether the suit is barred by limitation is for the trial Court to independently decide considering the evidence led before it by the parties as the limitation is a mixed question of law and facts which cannot be decided based on the pleadings alone. Adding further, it is submitted that the High Court could have examined the maintainability and sustainability of the revision proceedings initiated by the appellants under Order VII Rule 11 (d) of CPC. 7.1. Elaborating further, on facts, the learned counsel for the appellants submitted that the Defendant No.1 – Trust had purchased 3/4 th share of the suit lands mentioned in the Schedule in an auction sale conducted by the Civil Court, Pune, in the year 1938 from the previous Inamdar Gosavis family and the same was duly registered; and they had also purchased the remaining 1/4th share in the suit lands in the year 1952 by another registered sale deed. Till then, the subject lands were in possession of the Government. Thereafter, the Defendant No.1 Trust became entitled to the suit lands in pursuance of the compromise decree dated 05.01.1990 passed in Civil Suit No.1622 of 1988, and they entered into several agreements with third parties, who constructed buildings in the

suit lands. While so, without any right, title and interest, the Respondent No.1 preferred Special Civil Suit No.133 of 2009 claiming declaration and possession over the suit lands. According to the learned counsel, the Respondent No.1 by filing the said suit, has attempted to question the correctness of various orders passed by several Courts including the order passed by this Court. These orders date back to the year 1953. Further, this exercise is done with an oblique motive to set at naught the orders which have attained finality decades ago and the respondent No.1/Plaintiff and its predecessors having slept over the orders which conclusively affirmed the title and ownership of the appellant Trust over the suit lands, cannot now suddenly come up with a suit to overturn the effect of the orders in the guise of there being a fresh cause of action. 7.2. Drawing our attention to paragraphs 34 and 53 of the plaint filed by the Respondent No.1, the learned counsel for the appellants submitted that the Respondent No.1 attempted to create an illusion of a cause of action by erroneously stating that the cause of action to file the suit arose on 02.03.2007 when he came to know that his rights over the suit properties have been affected by the proceedings between the defendants and another. Further, the Respondent No.1 relied on the pleadings stated in the writ petition filed by one Dr.F.Wadia, who claims to be in possession of a portion of the subject lands. The Respondent No.1, in paragraph 34 of the plaint stated that "…. One Advocate Shri Godge had appeared in the said matter. The said Advocate is well acquainted with the plaintiff. The said Advocate, after reading all the necessary related proceedings, informed the plaintiff of the mischief committed by the Defendants. The plaintiff thereafter collected all the necessary information and documents. The plaintiff then instructed his Advocates to file the present suit". However, there is no averment as to when the Respondent No.1 was intimated by Mr.Godge. Thus, the cause of action alleged by the Respondent No.1 is purely illusory and has been stated with a view to get over the bar under Order VII Rule 11(d) of CPC.

7.3. It is also submitted by the learned counsel for the appellants that the limitation period for seeking cancellation of an instrument as per Article 59 of the Limitation Act, 1963, is 3 years from the date when the existence of document first becomes known to the plaintiff. In case of registered document, the date of registration becomes the date of deemed knowledge. Accordingly, the Respondent No.1 and his predecessors are deemed to have implied notice of the contents of the registered sale deeds and as per Article 58, the period of limitation to obtain any declaration in the suit commences within 3 years from the date when right to sue accrues. However, the Respondent No.1 by clever drafting, attempted to circumvent the provisions of the Limitation Act. That means, the Respondent No.1 knowing fully well that a challenge to the registered sale deeds of the years 1938 and 1952 in and by which the Defendant No.1 Trust acquired the title over the subject lands, would be hopelessly barred by limitation, has attempted to question the title of the Defendant No.1 Trust by inventing an imaginary cause of action to sustain his suit.

7.4. The learned counsel for the appellants further submitted that according to Article 65 of the Limitation Act, 1963, the right to possess immovable property or any interest therein, based on title, must be asserted within twelve years from the date, when the possession of the defendant becomes adverse to the plaintiff. Admittedly, the Respondent No.1 did not assert any right over the subject lands prior to the year 2008 or 2009. Consequently, the relief sought for possession is also barred by the law of limitation. Ultimately, it is submitted that the Respondent No.1 being stranger, has no locus standi to seek a declaration that compromise decrees passed in Special Civil Suit Nos.152/1951

and 1622/1988 and Civil appeal No.787/2001 are void ab initio, null and void and be set aside. 7.5. Without properly appreciating all these aspects, the trial Court erred in rejecting the application filed by the appellants under Order VII Rule 11(d) of CPC and the same was also affirmed by the High Court, by the order impugned herein, which will have to be set aside, according to the learned counsel for the appellants.

8. Per contra, the learned counsel for the Respondent No.1 submitted that in the year 1710, Raja Shahu Chhatrapati, the ancestor of the Respondent No.1/Plaintiff gave a sanad to Guru Shree Jadhavgir Gosavi of all the lands mentioned in the Sanad. The said Sanad gave rights of revenue grant which was hereditary. The said grant did not confer any titular rights over the land to the Gosavi family. The descendants of the Gosavi family though not empowered to create third party rights and interests, created third party rights. Thus, the said Gosavis who only had Inam grant in their favour entitling them only to the revenue from the land, had overstepped their authority and had parted the suit properties to the Defendant No.1 Trust, when they absolutely had no right to sell the suit properties. It is further submitted that the Defendant No.1 filed Special Civil Suit No.152/1951 against the State of Bombay and one Sukramgir Chimangir Gosavi in relation to the lands in village Yerawada, Taluka Haveli. The Defendant Nos.1 and 2 entered into compromise and it was agreed between them that the Yerawada Inam Village was a grant of soil and the Defendant No. 1 was Nivval Dhumaldars of the village to the extent of 12 anna share. The Respondent No.l / Plaintiff was not a party to the said suit and without his knowledge, the consent decree was obtained clandestinely. Therefore, the said sale deeds and compromise are not binding on the Respondent No.1. It is also contended that the parties cannot be permitted to construct and improve the terms of sanad of the year 1710 in 1950s to their whims and fancies. In any event, the Court had not given a determinative finding after adjudication, and hence, the compromise decree of the Court cannot be put against it.

8.1. Continuing further, the learned counsel for the Respondent No.1 submitted that the Respondent No.1 specifically stated in paragraph 39 of the Plaint that the defendants have played systematic fraud on various courts and without any judicial pronouncements have usurped the lands under suspicious compromises arrived at before the Court. Moreover, in paragraph 44 of the Plaint, the Respondent No.1 stated that the compromise arrived at in the suits filed in District Court, Pune, appears to be clearly an attempt to deprive the legal rights of the Plaintiff in respect of the said suit lands. 8.2. It is also submitted that whether the Respondent No.1 is entitled to declaration as sought for in the Plaint is a matter of trial and that cannot be gone into at the stage of deciding the application under Order VII Rule 11(d) of CPC. The Respondent No.1 in paragraph 53 of the Plaint clearly stated that he had come to know about the proceedings on 2nd March 2007 only when he was informed about Civil Application No. 1562/2006 in Writ Petition No. 3813 of 1996 filed by Dr. F Wadia. The knowledge of the fact that the Respondent's right in the suit property has been affected by the proceedings between the Defendants and another on 2nd March 2007 is the crucial date from which the clock starts ticking to determine limitation. Thus, well within the period of limitation, he preferred the Special civil suit against the appellants and another for declaration and possession of the suit properties.

8.3. That apart, it is submitted by the learned counsel for the Respondent No.1 that when an issue requires an inquiry into the facts, it cannot be tried as a preliminary issue. To buttress the same, he placed reliance on the decision in Satti Paradesi Samadhi & Pillayar Temple v. M. Sankuntala4, wherein, it was held that 'the court has no jurisdiction to try a suit on mixed issues of law and fact as a preliminary issue'. 8.4. Referring to the decision in Sajjan Sikaria v. Shakuntala Devi Mishra5, it is submitted by the learned counsel for the Respondent No.1 that while dealing with an application under Order VII Rule 11 of CPC, there is no requirement to consider the written statement filed by the defendant. That apart, in Saleem Bhai v. State of Maharashtra6, it was held by this Court that 'a perusal of Order VII Rule 11 of CPC makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage; and therefore, a direction to file the written statement without deciding the application under Order VII Rule 11 of CPC cannot be procedural irregularity touching the exercise of jurisdiction by 4 (2015) 5 SCC 674 5 (2005) 13 SCC 687 6 (2003) 1 SCC 557 the trial Court'.

8.5. Considering all these factors, the High Court rightly dismissed the application filed by the appellants under Order VII Rule 11(d) of CPC, by observing that the plaint cannot be rejected at the threshold, as the issue of limitation is a mixed question of facts and law for which the parties will have to lead evidence. Thus, according to the learned counsel, there is no requirement to interfere with the order impugned herein and the appeal filed by the appellants is liable to be dismissed.

9. We have considered the submissions made by the learned counsel appearing for both sides and perused the materials available on record.

10. The subject matter of the present proceedings is qua lands in S.Nos.14A/1A/1, 144, 145, 95, 90, 129, 191A (part), 160 (Part), 191 (part), 20, 103(part), 120(part), 141, 233, 94(part), 104 and 105 situated in Yerawada, Taluka Haveli, District Pune. The Respondent No.1 / plaintiff preferred Special Civil Suit No.133 of 2009, for declaration of his ownership and possession in respect of the suit properties. Seeking rejecting of the said plaint, the appellants filed an application under Order VII Rule 11(d) of CPC on the ground that the reliefs sought in the suit were clearly barred by limitation. The trial Court rejected the application filed by the appellants stating that the issue of limitation is a mixed question of facts and law, for which, the parties will have to lead evidence. The revision application filed by the appellants against the said order of the trial Court, was also rejected by the High Court, by observing that (i) the plaintiff has specifically asserted that Gosavis family had no authority to create third party rights and they were only entitled to revenue grant; (ii)whether the Plaintiff is entitled to declaration in terms of prayer clauses (a) and (b) in view of the sale deeds executed in favour of Defendant No.1, is a matter of trial and that cannot be gone into at the stage of deciding the application under Order VII Rule 11(d) of CPC; and (iii) the defendants played a systematic fraud on various courts and without any judicial pronouncements, usurped the suit lands under suspicious compromise arrived at before the Court. Feeling aggrieved and being dissatisfied with the rejection orders of the Courts below, the appellants are before us with the present appeal.

11. The law applicable for deciding an application filed under Order VII Rule 11 of CPC7 was outlined by this Court in the decision in Dahiben v. Arvindbhai Kalyanji Bhanusali (Gajra) dead through legal

representatives8 and the same read as follows:

> "23.1 ... 7 "11. Rejection of plaint.– The plaint shall be rejected in the following cases–
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> (a) where it does not disclose a cause of action;
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> (b) where the relief claimed in undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
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> (c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
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> (d) where the suit appears from the statement in the plaint to be barred by any law;
>
> (e) where it is not filed in duplicate;
>
> (f) where the plaintiff fails to comply with the provisions of rule 9:
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> Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp- paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevent by any cause of exceptional nature for correction the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff." 8 (2020) 7 SCC 366 : 2020 SCC OnLine SC 562 23.2. The remedy under Order VII Rule 11 is an independent and special remedy, wherein the Court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.
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> 23.3. The underlying object of Order VII Rule 11 (a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11 (d), the Court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.
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> 23.4. In Azhar Hussain v. Rajiv Gandhi9 this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words : (SCC p.324, para 12) "12. ...The whole purpose of conferment of such power is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the Court, and exercise the mind of the respondent. The sword of Damocles need

not be kept hanging over his head unnecessarily without point or purpose. Even if an ordinary civil litigation, the Court readily exercises the power to reject a plaint, if it does not disclose any cause of action." 23.5. The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order VII Rule 11 are required to be strictly adhered to.

23.6. Under Order VII Rule 11, a duty is cast on the Court to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint 10, read in conjunction with the documents relied upon, or whether the suit is barred by any law.

23.7. Order VII Rule 14(1) provides for production of documents, on which the plaintiff places reliance in his suit, which reads as under:

"14.Production of document on which plaintiff sues or relies.– (1)Where a 9 1986 Supp SCC 315. Followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, 1998 SCC OnLine Guj 281 : (1998) 2 GLH 823 10 Liverpool & London S.P. & I Assn. Ltd. V. M.V. Sea Success I, (2004) 9 SCC 512 plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in Court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.

(2)Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.

(3)A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(4)Nothing in this rule shall apply to document produced for the cross examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory." (emphasis supplied) 23.8. Having regard to Order VII Rule 14 CPC, the documents filed alongwith the plaint, are required to be taken into consideration for deciding the application under Order VII Rule 11 (a). When a document referred to in the plaint, forms the basis of the plaint, it should be treated as a part of the plaint.

23.9. In exercise of power under this provision, the Court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out. 23.10. At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration11.

23.11. The test for exercising the power under Order VII Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in Liverpool & London S.P. & I Assn. Ltd. v. M.V.Sea Success I which reads as :

> (SCC p.562, para 139) "139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the 11 Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137 plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed." 23.12. In Hardesh Ores (P.) Ltd. v. Hede & Co.12 the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. D.Ramachandran v.

R.V.Janakiraman13 23.13. If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order VII Rule 11 CPC. 23.14. The power under Order VII Rule 11 CPC may be exercised by the Court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of Saleem Bhai v. State of Maharashtra14. The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in Azhar Hussain (supra).

23.15. The provision of Order VII Rule 11 is mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds specified in clause (a) to (e) are made out. If the Court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the Court has no option, but to reject the plaint.

24. "Cause of action" means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment. It consists of a bundle of material facts, which are necessary for the plaintiff to prove in order to entitle him to the reliefs claimed in the suit.

24.1. In Swamy Atmanand v. Sri Ramakrishna Tapovanam15 this Court held :

> "24. A cause of action, thus, means every fact, which if traversed, it would be necessary for the plaintiff to prove an order to support his right to a judgment of the court. In other words, it is a bundle of facts, which taken 12 (2007) 5 SCC 614 13 (1999) 3 SCC 267 14 (2003) 1 SCC 557 15 (2005) 10 SCC 51 with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act, no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but

includes all the material facts on which it is founded" (emphasis supplied) 24.2. In T. Arivanandam v. T.V. Satyapal16 this Court held that while considering an application under Order VII Rule 11 CPC what is required to be decided is whether the plaint discloses a real cause of action, or something purely illusory, in the following words: (SCC p. 470, para 5) "5. ...The learned Munsif must remember that if on a meaningful – not formal – reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII, Rule 11 C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing ..." (emphasis supplied) 24.3. Subsequently, in I.T.C. Ltd. v. Debt Recovery Appellate Tribunal 17 this Court held that law cannot permit clever drafting which creates illusions of a cause of action. What is required is that a clear right must be made out in the plaint.

24.4. If, however, by clever drafting of the plaint, it has created the illusion of a cause of action, this Court in Madanuri Sri Ramachandra Murthy v. Syed Jalal18 held that it should be nipped in the bud, so that bogus litigation will end at the earliest stage. The Court must be vigilant against any camouflage or suppression, and determine whether the litigation is utterly vexatious, and an abuse of the process of the court.

25. The Limitation Act, 1963 prescribes a time-limit for the institution of all suits, appeals, and applications. Section 2(j) defines the expression "period of limitation" to mean the period of limitation prescribed in the Schedule for suits, appeals or applications. Section 3 lays down that every suit instituted after the prescribed period, shall be dismissed even though limitation may not have been set up as a defence. If a suit is not covered by any specific article, then it would fall within the residuary article.

16 (1977) 4 SCC 467 17 (1998) 2 SCC 170 18 (2017) 13 SCC 174

26. Articles 58 and 59 of the Schedule to the 1963 Act, prescribe the period of limitation for filing a suit where a declaration is sought, or cancellation of an instrument, or rescission of a contract, which reads as under :

Description of suit	Period of limitation	Time from which perio begins to run
58. To obtain any other declaration	Three years	When the right to sue first accrues
59. To cancel or set aside an instrument or decree or for the rescission of a contract	Three years	When the facts entitl the plaintiff to have instrument or decree cancelled or set asid the contract rescinde first become known to him.

> The period of limitation prescribed under Articles 58 and 59 of the 1963 Act is three years, which commences from the date when the right to sue first accrues.
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> 27. In Khatri Hotels Pvt. Ltd. v. Union of India19 this Court held that the use of the word 'first' between the words 'sue' and 'accrued', would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. That is, if there are successive violations of the right, it would not give rise to a fresh cause of action, and the suit will be liable to be dismissed, if it is beyond the period of limitation counted from the date when the right to sue first accrued.
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> 28. A three-Judge Bench of this Court in State of Punjab v. Gurdev Singh 20 held that the Court must examine the plaint and determine when the right to sue first accrued to the plaintiff, and whether on the assumed facts, the plaint is within time. The words "right to sue" means the right to seek relief by means of legal proceedings.

The right to sue accrues only when the cause of action arises. The suit must be instituted when the right asserted in the suit is infringed, or when there is a clear and unequivocal threat to infringe such right by the defendant against whom the suit is instituted. Order VII Rule 11(d) provides that where a suit appears from the averments in the plaint to be barred by any law, the plaint shall be rejected." 19 (2011) 9 SCC 126 20 (1991) 4 SCC 1 : 1991 SCC (L&S) 1082

12. As settled in law, when an application to reject the plaint is filed, the averments in the plaint and the documents annexed therewith alone are germane. The averments in the application can be taken into account only to consider whether the case falls within any of the sub-rules of Order VII Rule 11 by considering the averments in the plaint. The Court cannot look into the written statement or the documents filed by the defendants. The Civil Courts including this Court cannot go into the rival contentions at that stage. Keeping in mind the legal position, let us examine whether the suit filed by the Respondent No.1 is barred by limitation, in the light of the averments contained in the plaint filed by him.

13. The Respondent No.1/Plaintiff claimed title, right and interest over the suit properties, stating that he is the direct descendent of Chhatrapati Shivaji Maharaj from the Bhonsale Dynasty and he has inherited the vast lands all over Maharashtra from his ancestors. He further stated in his plaint that Raja Shahu Chhatrapati gave only the rights of revenue grant to Guru Shree Jadhavgir Gosavi and the said grant did not give any rights in the lands to the Gosavi family and hence, they had no right to sell the suit properties to the Defendant No.1. Though the Respondent No.1 relied on the report of the Inam Commissioner appointed under the provisions of the Act XI, 1852, which stated that the grant enjoyed by the Respondent No.1's ancestors was only a revenue grant and stated that Gosavis family had no authority to create third party rights in the suit lands, the same was not substantiated with proper pleadings and documents. It was further stated by the Respondent No.1 that by order dated 17.02.1980, the Government of Maharashtra was pleased to direct that the Satara Saranjam (Jagir / grant of land) shall be continued in the name of the Respondent No.1 / plaintiff, but, at that time, he was a minor. That apart, the Friendship Treaty was continued by the

Government of Maharashtra vide its resolution dated 28.02.1980 and on attaining the age of majority by the plaintiff, the Maharashtra Government by resolution dated 01.09.1984 continued the said Saranjam upon the plaintiff. Hence, the Respondent No.1 continues to be the owner of the suit properties. We are unable to accept these statements. The averments in the plaint disclose that even prior to the alleged Resolution dated 28.02.1980, a major portion of the property (3/4th share) has been conveyed as early as in 1938 through Court auction and the remaining portion (1/4th share) in 1952. The plaintiff was a minor in 1980 and by 01.09.1984, he claims to have become a major. However, he has not stated as to when he was born. From the averments, it can be presumed that the plaintiff must have born in 1965/1966 considering the fact that he was declared as a major in 1984. The above statements in the plaint imply that the plaintiff was not even born when the property was sold. What also remains undisputed is the fact that the plaintiff's predecessors had not challenged the sale in 1938 and 1952. By the time, the alleged resolution was passed, the property had already been conveyed. The resolution can convey any right only over the properties which have not been conveyed. The plaintiff though has annexed a Family Tree chart along with the plaint, he has not produced any other documentary evidence to the various claims which he has made. In paragraph 10 of the plaint, the plaintiff claims that the estate was attached as there were no natural heirs. He has narrated many facts in the plaint from paragraphs 11 to 32, which are adverse to his claim of title. The averments in the plaint relating to grant of Sanad are vague without any reference to specific date. They, according to us, are baseless and vague statements, cleverly crafted to create a cause of action. The plaintiff himself avers in paragraph 25 that a suit was filed by the appellant/1 st defendant claiming his title based on the auction purchase against the Government. The averment does not even disclose that it has come to his knowledge only recently. We feel it strange for the plaintiff to even plead in paragraph 26 that he was not impleaded as a party in the 1951 suit, compromised in 1953, when he was not even born.

14. The plaintiff, in our wisdom, cannot assert or deny something which was whether within the knowledge of his predecessor or not, when he was not even born. Irrespective of the above, the fact that the predecessors of the Respondent No.1/plaintiff, never challenged the sale of property to the Defendant No.1/appellant by court auction and the subsequent registration of the deeds, despite constructive notice, would imply that they had acceded to the title of the appellant, which cannot now be questioned by the plaintiff after such long time. There is also a presumption in law that a registered document is validly executed and is valid until it is declared as illegal. In this regard, this Court in Prem Singh v. Birbal21, held as under:

> 21 (2006) 5 SCC 353 : 2006 SCC OnLine SC 522 "27. There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, Respondent 1 has not been able to rebut the said presumption."

15. At this juncture, it would be relevant to refer to relevant portion of Section 3 of the Transfer of Property Act, 1882, which reads as under:

> "3. Interpretation clause..... ..... "a person is said to have notice" of a fact when he actually knows that fact, or when, but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it.
>
> Explanation I.—Where any transaction relating to immoveable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, where the property is not all situated in one sub-district, or where the registered instrument has been registered under sub-section (2) of section 30 of the Indian Registration Act, 1908 (16 of 1908), from the earliest date on which any memorandum of such registered instrument has been filed by any Sub-Registrar within whose sub-district any part of the property which is being acquired, or of the property wherein a share or interest is being acquired, is situated:
>
> Provided that—(1) the instrument has been registered and its registration completed in the manner prescribed by the Indian Registration Act, 1908 (16 of 1908), and the rules made thereunder, (2) the instrument or memorandum has been duly entered or filed, as the case may be, in books kept under section 51 of that Act, and(3)the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under section 55 of that Act.
>
> Explanation II.—Any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof.
>
> Explanation III.—A person shall be deemed to have had notice of any fact if his agent acquires notice thereof whilst acting on his behalf in the course of business to which that fact is material:
>
> Provided that, if the agent fraudulently conceals the fact, the principal shall not be charged with notice thereof as against any person who was a party to or otherwise cognizant of the fraud."

16. When a portion of the property has been conveyed by court auction and registered in the first instance and when another portion has been conveyed by a registered sale deed in 1952, there is a constructive notice from the date of registration and the presumption under Section 3 of the Transfer of Property Act, comes into operation. The possession, in the present case, also has been rested with the appellant before several decades, which operates as notice of title. This Court in R.K. Mohd. Ubaidullah v. Hajee C. Abdul Wahab22, held as follows:

> "15. Notice is defined in Section 3 of the Transfer of Property Act. It may be actual where the party has actual knowledge of the fact or constructive. "A person is said to have notice" of a fact when he actually knows that fact, or when, but for wilful

abstention from an inquiry or search which he ought to have made, or gross negligence, he would have known it. Explanation II of said Section 3 reads:

"Explanation II.—Any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof." Section 3 was amended by the Amendment Act of 1929 in relation to the definition of "notice". The definition has been amended and supplemented by three explanations, which settle the law in several matters of great importance. For the immediate purpose Explanation II is relevant. It states that actual possession is notice of the title of the person in possession. Prior to the amendment there had been some uncertainty because of divergent views expressed by various High Courts in relation to the actual possession as notice of title. A person may enter the property in one 22 (2000) 6 SCC 402 : 2000 SCC OnLine SC 995 at page 410 capacity and having a kind of interest. But subsequently while continuing in possession of the property his capacity or interest may change. A person entering the property as tenant later may become usufructuary mortgagee or may be agreement holder to purchase the same property or may be some other interest is created in his favour subsequently. Hence with reference to subsequent purchaser it is essential that he should make an inquiry as to the title or interest of the person in actual possession as on the date when the sale transaction was made in his favour. The actual possession of a person itself is deemed or constructive notice of the title if any, of a person who is for the time being in actual possession thereof. A subsequent purchaser has to make inquiry as to further interest, nature of possession and title under which the person was continuing in possession on the date of purchase of the property. In the case on hand Defendants 2 to 4 contended that they were already aware of the nature of possession of the plaintiff over the suit property as a tenant and as such there was no need to make any inquiry. At one stage they also contended that they purchased the property after contacting the plaintiff, of course, which contention was negatived by the learned trial court as well as the High Court. Even otherwise the said contention is self-contradictory. In view of Section 19(b) of the Specific Relief Act and definition of "notice" given in Section 3 of the Transfer of Property Act read along with Explanation II, it is rightly held by the trial court as well as by the High Court that Defendants 2 to 5 were not bona fide purchasers in good faith for value without notice of the original contract."

17. The next aspect to be considered herein is the cause of action arose for filing the suit by the Respondent No.1. In this regard, we may quote the following paragraphs of the plaint:

"34. The Plaintiff says that in Writ Petition No. 3813 of 1996 a Civil Application No. 1562 of 2006 came to be filed. One Advocate Shri. Godge had appeared in the said matter. The said Advocate is well acquainted with the Plaintiff. The said Advocate, after reading all the necessary related proceedings, informed the Plaintiff of the mischief committed by the Defendants. The Plaintiff thereafter collected all the

necessary information and documents. The Plaintiff then instructed his Advocates to file the present suit.

35. The Plaintiff says that the present suit has been filed on the latest information received by the Plaintiff in respect of the lands in possession with the Defendants. The Plaintiff has accordingly described the suit properties in the schedule annexed as Exhibit "B" hereto. The Plaintiff craves leave of the Hon'ble Court to amend the plaint in the event any other lands of the Plaintiff are detected and are found. The Plaintiff may also be permitted to amend the plaint and bring on record the parties in whose favour the Defendants may have created third party rights.

53. The Plaintiff states and submits that he got the knowledge of the proceedings on 2nd March 2007 only when he was informed about the Civil Application No. 1562 of 2006 in Writ Petition No. 3813 of 1996 filed by Dr. F. Wadia. The said knowledge gives cause of action for the Plaintiff to file suit. The knowledge that the Plaintiffs right in the suit Property have been affected by the proceedings between the Defendants and another the said day i.e. 2nd March 2007 is the date as prescribed by law for the limitation to start, as he first got the knowledge then. The Plaintiff has thereafter collected all the information and approached this Hon'ble Court as soon as possible. There is much more information that the Plaintiff awaits in respect of the land in Village Yerwada. The Plaintiff is also filing· a separate application under Order 2 Rule 2 of the Civil Procedure Code reserving right to seek other additional reliefs against the Defendants".

On a reading of the plaint averments, it is clear that the plaintiff was well acquainted with the counsel Mr.Godge. If the plaintiff was already acquainted with Mr. Godge, whom upon verification of the records from the status of the suit, we find to have entered appearance in the suit for the 20 th Respondent on 21.07.2005 itself, would have acquired knowledge much prior to 2nd March 2007. We also find that Civil Application No 1562 of 2006 was not filed by Mr.Godge. Therefore, it is a clear case where the plaintiff has not approached the Court with clean hands. We have no hesitation to hold that the 2nd March 2007, is a fictional date, created only for the purpose of this suit. As such, the judgment in T.Arivanandam v. T.V.Satyapal23 squarely becomes applicable.

18. Continuing further with the plea of limitation, the Courts below have held that 23 (1977) 4 SCC 467 the question of the suit being barred by limitation can be decided at the time of trial as the question of limitation is a mixed question of law and facts. Though the question of limitation generally is mixed question of law and facts, when upon meaningful reading of the plaint, the court can come to a conclusion that under the given circumstances, after dissecting the vices of clever drafting creating an illusion of cause of action, the suit is hopelessly barred and the plaint can be rejected under Order VII Rule 11. In the present case, we have already held that 02.03.2007 is a fictional date. It is not a case where a fraudulent document was created by the appellant or his predecessors. The title of the suit property as observed by us earlier was conveyed in 1938 and 1952, and what transpired later by way of compromise was only an affirmative assertion by the State. While so, the prayer (a) made in the suit relates to declaration to the effect that the Respondent No.

1 is the owner of the suit properties.

19. As per Section 31 of the Specific Relief Act, 1963, a declaration to adjudge the documents as void or voidable must be sought if it causes a serious injury. In the present case, the sale deeds undisputably stand adverse to the interest and right of the plaintiff and hence, a relief to declare them as invalid must have been sought. Though the plaintiff has pleaded the documents to be void and sought to ignore the documents, we do not think that the document is void, but rather, according to us, it can only be treated as voidable. The claim of the plaintiff that the grant is only a revenue grant and not a soil grant, has not been accepted by the State which entered into a compromise. In paragraph 14 of the plaint, there is an averment that the original sanad was lost and a new sanad was given to the effect that the inam was a revenue grant based on the report of the Inam Commissioner. Again, specific dates are not mentioned in the plaint. In paragraph 25, the plaintiff alleges that third party rights were created by the Gosavi family without any right. Here also, the details are vague. It can be inferred that such rights ultimately culminated into court auction, in which, the property was sold to the appellant. Since the original Sanad was lost, the plaintiff had initiated a suit against the State which was compromised. It is not in dispute that there was a grant. There is only a dispute with regard to the contents of the Sanad, which was lost. In the absence of the original Sanad, it is not possible for any court to determine the contents of the same. The alleged misrepresentation is neither to the character nor is there any allegation of forgery or fabrication. It is also settled law that a document is void only if there is a misrepresentation on its character and when there is a misrepresentation in the contents, it is only voidable. In the present case, the averments in the plaint make out only a case for voidabale transaction and not a void transaction. Fraud is merely pleaded without any specific attributes but based on surmises and conjectures. It will be useful to refer to the judgment of this Court in Ningawwa v. Byrappa Shiddappa Hireknrabar24, wherein it was held as under:

> "5. The legal position will be different if there is a fraudulent misrepresentation not merely as to the contents of the document but as to its character. The authorities 24 1968 SCC OnLine SC 206 : (1968) 2 SCR 797 : (1968) 2 SCJ 555 : AIR 1968 SC 956 make a clear distinction between fraudulent misrepresentation as to the character of the document and fraudulent misrepresentation as to the contents thereof. With reference to the former, it has been held that the transaction is void, while in the case of the latter, it is merely voidable. In Foster v. Mackinon [(1869) 4 CP 704] the action was by the endorsee of a bill of exchange. The defendant pleaded that he endorsed the bill on a fraudulent representation by the acceptor that he was signing a guarantee. In holding that such a plea was admissible, the Court observed:
>
> "It (signature) is invalid not merely on the ground of fraud, where fraud exists, but on the ground that the mind of the signer did not accompany the signature; in other words, that he never intended to sign, and therefore in contemplation of law never did sign, the contract to which his name is appended.... The defendant never intended to sign that contract or any such contract. He never intended to put his name to any instrument that then was or thereafter might become negotiable. He was deceived, not merely as to the legal effect, but as to the 'actual contents' of the instrument."

> This decision has been followed by the Indian courts Sanni Bibi v. Siddik Hossain [AIR 1919 Cal 728], and Brindaban v. Dhurba Charan [AIR 1929 Cal 606]. It is not the contention of the appellant in the present case that there was any fraudulent misrepresentation as to the character of the gift deed but Shiddappa fraudulently included in the gift deed plots 91 and 92 of Lingadahalli village without her knowledge. We are accordingly of the opinion that the transaction of gift was voidable and not void and the suit must be brought within the time prescribed under Article 95 of the Limitation Act." 19.1. In the present case, the right to sue had first accrued to the predecessors of the plaintiff, when the properties were brought for sale by the court. No challenge was made to the court auction or to the conveyance in 1952. At this length of time, we can only assume that the predecessors of the Plaintiff had not initiated any proceedings as according to them, either it was a grant of soil or during that period, the rights had not resumed. The plaintiff had become a major by 1984. By virtue of Article 60 of the Limitation Act, 1963, the plaintiff has a right to seek a declaration that the alienation of a property in which he had a right, was void within 3 years. Though the Article prima facie looks to be applicable only to cases, where there was an alienation by the guardian, we feel that the period of limitation would be applicable even when a third party had alienated the share or property of a minor. Even otherwise, Article 58 would come into operation and the plaintiff ought to have filed the suit within three years from the date when he became a major to seek any declaratory relief, as it is the date on which his right to sue first is deemed to have been accrued. The plaintiff has asserted that by government resolutions in 1980 and 1984 he has acquired the title over the properties.

Therefore, as a prudent man, he ought to have initiated necessary steps to protect his interest. Having failed to do so and created a fictional date for cause of action, the plaintiff is liable to be non-suited on the ground of limitation.

20. As noted in the preceding paragraphs, the court auction was held in 1938 and sale deed was registered in the year 1952 in favour of the Defendant No.1 in respect of the suit properties, whereas, the suit was filed only in the year 2008, though the Respondent No.1 / Plaintiff and his predecessors were aware of the existence of the said registered sale deed of the suit properties. In fact, there is no averment in the plaint to the effect that the predecessors were not aware of the transactions. The limitation period for setting aside the sale deed would start running from the date of registration of the same and as per Article 59 of the Limitation Act, 1963, after three years of the registration, the Plaintiff is barred from seeking cancellation of the said registered sale deed or the decree that was passed before 50 years and the consequential judgements. We have already referred to Section 3 of the Specific Relief Act, 1963. The plaintiff, in our view, has miserably failed to ascertain the existence of the fact by being diligent. The question as to when a period of limitation would commence in respect of a registered document is no longer res integra. In this regard, this Court in Dilboo v. Dhanraji25, held as follows:

> "20..... Whenever a document is registered the date of registration becomes the date of deemed knowledge. In other cases where a fact could be discovered by due

> diligence then deemed knowledge would be attributed to the plaintiff because a party cannot be allowed to extend the period of limitation by merely claiming that he had no knowledge"

21. It will also be useful to refer to the judgement of this court in Mohd. Noorul Hoda v. Bibi Raifunnisa26, wherein the effect of willful abstention from making enquires was laid down and the following paragraphs are relevant:

> "5. Section 55(1) of the Transfer of Property Act, 1882 regulates rights and liabilities of the buyer and seller. The seller is bound to disclose to the buyer any material defect in the property or in the seller's title thereto of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover. The seller is to answer, to the best of his information, all relevant questions put to him by the buyer in respect of the property or the title thereto. The seller shall be deemed to contract with the buyer that the interest which the seller professes to transfer to the buyer subsists and that he has power to transfer the same. Section 3 provides that "a person is said to have a notice of a fact when he actually knows the fact, or when but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it". Explanation II amplifies that "any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof". Constructive notice in equity treats a man who ought to have known a fact, as if he actually knows it. Generally speaking, 25 (2000) 7 SCC 702 26 (1996) 7 SCC 767 constructive notice may not be inferred unless some specific circumstances can be shown as a starting point of enquiry which if pursued would have led to the discovery of the fact. As a fact it is found that Rafique filed the sale deed dated 1-12-

1959 executed in his favour by Mahangu, in Title Suit No. 220 of 1969 for which the petitioner claims to have derivative title through Rafique. Rafique had full knowledge that despite the purported sale, Bibi Raifunnisa got the preliminary decree passed in 1973 and in 1974 under the final decree the right, title and interest in the suit property passed on to her. Under Section 55 when second sale deed dated 6-9-1980 was got executed by the petitioner from Rafique, it is imputable that Rafique had conveyed all the knowledge of the defects in title and he no longer had title to the property. It is also a finding of fact recorded by the appellate court and affirmed by the High Court that the petitioner was in know of full facts of the preliminary decree and the final decree passed and execution thereof. In other words, the finding is that he had full knowledge, from the inception of Title Suit No. 220 of 1969 from his benamidar. Having had that knowledge, he got the second sale deed executed and registered on 6-9-1980. Oblivious to these facts, he did not produce the second original sale deed nor is an attempt made to produce secondary evidence on proof of the loss of original sale deed.

6. The question, therefore, is as to whether Article 59 or Article 113 of the Schedule to the Act is applicable to the facts in this case. Article 59 of the Schedule to the Limitation Act, 1908 had

provided inter alia for suits to set aside decree obtained by fraud. There was no specific article to set aside a decree on any other ground. In such a case, the residuary Article 120 in Schedule III was attracted. The present Article 59 of the Schedule to the Act will govern any suit to set aside a decree either on fraud or any other ground. Therefore, Article 59 would be applicable to any suit to set aside a decree either on fraud or any other ground. It is true that Article 59 would be applicable if a person affected is a party to a decree or an instrument or a contract. There is no dispute that Article 59 would apply to set aside the instrument, decree or contract between the inter se parties. The question is whether in case of person claiming title through the party to the decree or instrument or having knowledge of the instrument or decree or contract and seeking to avoid the decree by a specific declaration, whether Article 59 gets attracted? As stated earlier, Article 59 is a general provision. In a suit to set aside or cancel an instrument, a contract or a decree on the ground of fraud, Article 59 is attracted. The starting point of limitation is the date of knowledge of the alleged fraud. When the plaintiff seeks to establish his title to the property which cannot be established without avoiding the decree or an instrument that stands as an insurmountable obstacle in his way which otherwise binds him, though not a party, the plaintiff necessarily has to seek a declaration and have that decree, instrument or contract cancelled or set aside or rescinded. Section 31 of the Specific Relief Act, 1963 regulates suits for cancellation of an instrument which lays down that any person against whom a written instrument is void or voidable and who has a reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, can sue to have it adjudged void or voidable and the court may in its discretion so adjudge it and order it to be delivered or cancelled. It would thus be clear that the word 'person' in Section 31 of the Specific Relief Act is wide enough to encompass a person seeking derivative title from his seller. It would, therefore, be clear that if he seeks avoidance of the instrument, decree or contract and seeks a declaration to have the decrees set aside or cancelled he is necessarily bound to lay the suit within three years from the date when the facts entitling the plaintiff to have the decree set aside, first became known to him.

7. The question, therefore, is as to when the facts of granting preliminary and final decrees touching upon the suit land first became known to him. As seen, when he claimed title to the property as owner and Rafique to be his benamidar, as admitted by Rafique, the title deed dated 1-12-1959 was filed in Title Suit No. 220 of 1969. Thereby Rafique had first known about the passing of the preliminary decree in 1973 and final decree in 1974 as referred to earlier. Under all these circumstances, Article 113 is inapplicable to the facts on hand. Since the petitioner claimed derivative title from him but for his wilful abstention from making enquiry or his omission to file the second sale deed dated 6-9-1980, an irresistible inference was rightly drawn by the courts below that the petitioner had full knowledge of the fact right from the beginning; in other words right from the date when title deed was filed in Title Suit No. 220 of 1969 and preliminary decree was passed on 2-1-1973 and final decree was passed on 5-2-1974. Admittedly, the suit was filed in 1981 beyond three years from the date of knowledge. Thereby, the suit is hopelessly barred by limitation. The decree of the appellate court and the order of the High Court, therefore, are not illegal warranting interference."

22. It will also be useful to refer to the judgment of this Court in Prem Singh v. Birbal27, where the scope of the Limitation Act, 1963 and Article 59 was discussed and held as under:

"11. Limitation is a statute of repose. It ordinarily bars a remedy, but, does not extinguish a right. The only exception to the said rule is to be found in Section 27 of the Limitation Act, 1963 which provides that at the determination of the period prescribed thereby, limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.

27 (2006) 5 SCC 353 : 2006 SCC OnLine SC 522

12. An extinction of right, as contemplated by the provisions of the Limitation Act, prima facie would be attracted in all types of suits. The Schedule appended to the Limitation Act, as prescribed by the articles, provides that upon lapse of the prescribed period, the institution of a suit will be barred. Section 3 of the Limitation Act provides that irrespective of the fact as to whether any defence is set out or is raised by the defendant or not, in the event a suit is found to be barred by limitation, every suit instituted, appeal preferred and every application made after the prescribed period shall be dismissed.

13. Article 59 of the Limitation Act applies specially when a relief is claimed on the ground of fraud or mistake. It only encompasses within its fold fraudulent transactions which are voidable transactions.

14. A suit for cancellation of instrument is based on the provisions of Section 31 of the Specific Relief Act, which reads as under:

"31. When cancellation may be ordered.—(1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

(2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation."

15. Section 31 of the Specific Relief Act, 1963 thus, refers to both void and voidable documents. It provides for a discretionary relief.

16. When a document is valid, no question arises of its cancellation. When a document is void ab initio, a decree for setting aside the same would not be necessary as the same is non est in the eye of the law, as it would be a nullity.

17. Once, however, a suit is filed by a plaintiff for cancellation of a transaction, it would be governed by Article 59. Even if Article 59 is not attracted, the residuary

article would be.

> 18. Article 59 would be attracted when coercion, undue influence, misappropriation or fraud which the plaintiff asserts is required to be proved. Article 59 would apply to the case of such instruments. It would, therefore, apply where a document is prima facie valid. It would not apply only to instruments which are presumptively invalid.

(See Unni v. Kunchi Amma [ILR (1891) 14 Mad 26] and Sheo Shankar Gir v. Ram Shewak Chowdhri [ILR (1897) 24 Cal 77].)

19. It is not in dispute that by reason of Article 59 of the Limitation Act, the scope has been enlarged from the old Article 91 of the 1908 Act. By reason of Article 59, the provisions contained in Articles 91 and 114 of the 1908 Act had been combined.

20. If the plaintiff is in possession of a property, he may file a suit for declaration that the deed is not binding upon him but if he is not in possession thereof, even under a void transaction, the right by way of adverse possession may be claimed. Thus, it is not correct to contend that the provisions of the Limitation Act would have no application at all in the event the transaction is held to be void.

21. Respondent 1 has not alleged that fraudulent misrepresentation was made to him as regards the character of the document. According to him, there had been a fraudulent misrepresentation as regards its contents.

22. In Ningawwa v. Byrappa [(1968) 2 SCR 797 : AIR 1968 SC 956] this Court held that the fraudulent misrepresentation as regards character of a document is void but fraudulent misrepresentation as regards contents of a document is voidable stating:

> (SCR p. 801 C-D) "The legal position will be different if there is a fraudulent misrepresentation not merely as to the contents of the document but as to its character. The authorities make a clear distinction between fraudulent misrepresentation as to the character of the document and fraudulent misrepresentation as to the contents thereof. With reference to the former, it has been held that the transaction is void, while in the case of the latter, it is merely voidable." In that case, a fraud was found to have been played and it was held that as the suit was instituted within a few days after the appellant therein came to know of the fraud practised on her, the same was void. It was, however, held: (SCR p. 803 B-E) "Article 91 of the Limitation Act provides that a suit to set aside an instrument not otherwise provided for (and no other provision of the Act applies to the circumstances of the case) shall be subject to a three years' limitation which begins to run when the facts entitling the plaintiff to have the instrument cancelled or set aside are known to him. In the present case, the trial court has found, upon examination of the evidence, that at the very time of the execution of the gift deed, Ext. 45 the appellant knew that her husband prevailed upon her to convey Surveys Plots Nos. 407/1 and 409/1 of Tadavalga village to him by undue influence. The finding of the

> trial court is based upon the admission of the appellant herself in the course of her evidence. In view of this finding of the trial court it is manifest that the suit of the appellant is barred under Article 91 of the Limitation Act so far as Plots Nos. 407/1 and 409/1 of Tadavalga village are concerned." .....
>
> 28. If a deed was executed by the plaintiff when he was a minor and it was void, he had two options to file a suit to get the property purportedly conveyed thereunder. He could either file the suit within 12 years of the deed or within 3 years of attaining majority. Here, the plaintiff did not either sue within 12 years of the deed or within 3 years of attaining majority. Therefore, the suit was rightly held to be barred by limitation by the trial court."

23. Further, in the aforesaid suit, the Respondent No.1 also sought possession of the suit properties based on title. As per Article 65 of the Limitation Act, 1963, the possession of immovable property or any interest therein, based on title can be sought within twelve years. From the records, it is evident that the possession of the subject properties was initially with the Government of Maharashtra, then with the Gonsavis and thereafter with the Defendant No.1 and it can be safely said that at least for a century, the Respondent No.1 nor his predecessors have been in possession of the properties after the grant of Inam. The plaintiff has failed to sue the appellant/defendant or the State for possession within twelve years. We have already held that the title claim of the plaintiff is barred by limitation and therefore, the claim for possession is also barred and consequently, the relief of recovery of possession is also hopelessly barred by limitation.

24. Moreover, the Plaintiff has not produced any documentary evidence to show that he is entitled for the relief of declaration of ownership of the suit properties except by way of reliance of the resolutions of the government, which has lost its force in view of the decree of the Civil Court and subsequent compromise decrees. The decrees had also attained finality as the neither the plaintiff nor his ancestors have challenged the same in time. It is also evident on the face of record that the Plaintiff is a stranger to the suit properties; on the contrary, the Defendants are the owners of the suit properties. It is a settled principle of law that the owners cannot be restrained from dealing with their own properties at the instance of a stranger. The said relief is again a consequential relief to the claim of title, which has been non-suited on the ground of limitation. Hence, the prayer (c) made in the plaint is not maintainable.

25. Regarding the averments made in the plaint relating to fraud played on the plaintiff by the defendants in relation to the compromise decrees obtained in their favour, we are of the view that they are vague and general, besides baseless and unsubstantiated. Rather, no case can be culled out from the averments made in the plaint in this regard. The plea of fraud is intrinsically connected with the nature of Inam. We have already discussed the plea of fraud in the preceding paragraphs. We are also of the view that the plea has been raised only to overcome the period of limitation. Admittedly the Plaintiff is a stranger to the suits which ended in compromise. Therefore, in view of the direct bar under Order XXIII Rule 3A of CPC, he cannot seek a declaration 'that the compromise decrees passed in Spl. Civil Suit Nos.l52/1951 and 1622/1988 and Civil Appeal No.787/2001, Pune are void ab initio, null and void and the same are liable to be set aside'. The law on this point is also

already settled by this Court in Triloki Nath Singh v. Anirudh Singh28. The bar under Order XXIII Rule 3A of CPC is applicable to third parties as well and the only remedy available to them would be to approach the same court. In the present case, such an exercise is also not possible in view of the bar of limitation. Hence, we find the suit to be unsustainable.

26. At this juncture, we wish to observe that we are not unmindful of the position of law that limitation is a mixed question of fact and law and the question of rejecting the plaint on that score has to be decided after weighing the evidence on record. However, in cases like this, where it is glaring from the plaint averments that the suit is hopelessly barred by limitation, the Courts should not be hesitant in granting the relief and drive the parties back to the trial Court. We again place it on record that this is not a case where any forgery or fabrication is committed which had recently come to the knowledge of the plaintiff. Rather, the plaintiff and his predecessors did not take any steps to assert their title and rights in time. The alleged cause of action is also found to be creation of fiction. However, the trial Court erroneously dismissed the application filed by the appellants under Order VII Rule 11(d) of CPC. The High Court also erred in affirming the same, keeping the question of limitation open to be considered by the trial Court after considering the evidence along with other issues, without deciding the core 28 (2020) 6 SCC 629 : (2020) 3 SCC (Civ) 732 issue on the basis of the averments made by the Respondent No.1 in the Plaint as mandated by Order VII Rule 11 (d) of CPC. The spirit and intention of Order VII Rule 11(d) of CPC is only for the Courts to nip at its bud when any litigation ex facie appears to be a clear abuse of process. The Courts by being reluctant only cause more harm to the defendants by forcing them to undergo the ordeal of leading evidence. Therefore, we hold that the plaint is liable to be rejected at the threshold.

27. In fine, this appeal stands allowed by setting aside the orders so passed by the Courts below and the application filed by the appellants under Order VII Rule 11(d) of CPC is allowed by rejecting the plaint in Special Civil Suit No.133 of 2009 filed by the Respondent No.1. However, there is no order as to costs. Pending application(s), if any, shall stand disposed of.

.....J [J.B. Pardiwala] .....J [R. Mahadevan] NEW DELHI DECEMBER 20, 2024.