

## **Prem Singh & Ors vs Birbal & Ors on 2 May, 2006**

**Equivalent citations: AIR 2006 SUPREME COURT 3608, 2006 AIR SCW 3595, 2006 (5) AIR KANT HCR 271, (2006) 42 ALLINDCAS 84 (SC), (2006) 1 CLR 751 (SC), 2006 (2) ALL CJ 1597, (2006) 3 JCR 270 (SC), 2006 (6) SRJ 311, 2006 ALL CJ 2 1597, 2006 (5) SCALE 191, 2006 CORLA(BL SUPP) 266 SC, 2006 (42) ALLINDCAS 84, 2006 (1) CLR 751, (2007) 4 CIVILCOURTC 226, (2007) 2 LANDLR 719, (2006) 3 LANDLR 692, (2007) 1 CIVLJ 113, (2007) 1 MPLJ 1, 2006 (2) HRR 363, (2007) 1 MAD LW 873, 2006 (5) SCC 353, (2006) 2 WLC(SC)CVL 28, (2006) 5 MAH LJ 441, (2006) 3 MAD LJ 37, (2006) 3 PAT LJR 179, (2006) 5 SCJ 802, (2006) 4 SUPREME 69, (2006) 3 RECCIVR 381, (2006) 4 ICC 230, (2006) 5 SCALE 191, (2006) 3 JLJR 164, (2006) 64 ALL LR 162, (2006) 3 ALL WC 2512, (2006) 3 RAJ LW 2522, (2006) 2 PUN LR 647, (2006) 101 REVDEC 260, (2006) 2 ALL RENTCAS 521, (2006) 2 KER LT 863, (2006) 2 CURCC 247, (2006) 6 BOM CR 332**

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**Bench: S.B. Sinha, P.K. Balasubramanyan**

CASE NO.:

Appeal (civil) 2412 of 2006

PETITIONER:

Prem Singh & Ors.

RESPONDENT:

Birbal & Ors.

DATE OF JUDGMENT: 02/05/2006

BENCH:

S.B. Sinha & P.K. Balasubramanyan

JUDGMENT:

**J U D G E M E N T** (Arising out of SLP (C) No.11/2003) S.B. SINHA, J.

Leave granted.

Whether the provision of Article 59 of the Limitation Act would be attracted in a suit filed for setting aside a Deed of Sale, is in question in this appeal which arises out of a judgment and order dated 2.9.2002 passed by the High Court of Madhya Pradesh at Jabalpur Civil Second Appeal No.8 of

1998.

Respondent No.1 herein filed a suit for declaration and partition of the land consisting of 19 bighas and 12 biswas claiming himself to be a co-sharer with the defendant. One Mihilal was the owner of the suit land comprising of different khasra numbers, situate in Village Akhoda, in the District of Bhind. The said suit was filed by the plaintiff-Respondent No.1 alleging that his father Chhedilal had a share therein in addition to owner of another land in khasra No.516, measuring 6 biswas. Chhedilal died in the year 1950. His wife also died soon thereafter. At the time of the death of his father, the plaintiff-Respondent No.1 was a minor. He started living with Appellant No.4-Lal Bihari. He, allegedly, executed a deed of sale on 1.1.1961 in respect of khasra No.516 measuring 6 biswas to Babu Singh and Tek Singh for a consideration of Rs.7,000/-. His age in the Sale Deed was shown to be 26 years. Only on 17.8.1979, he, allegedly, gathered the information that the land under khasra No.516 was purported to have been sold by him to the aforementioned persons. He, thereafter, filed the suit on 24.9.1979. The Appellant herein pleaded that the suit was barred by limitation. The said suit of the Respondent No.1 was dismissed by the trial court by a judgment and decree dated 29.4.1995 holding that the suit was barred by limitation. An appeal was preferred thereagainst by the plaintiff. The 1st Appellate Court by judgment and decree dated 11.12.1997, held that the said Deed of Sale was got executed by playing fraud on the plaintiff who was a minor at the relevant point of time and the said Deed of Sale, thus, being void ab initio, the limitation of three years from the date of attaining of majority, as is provided for in Article 59 of the Limitation Act, 1963, would not be applicable in the instant case. A second appeal preferred by the Appellants herein was dismissed by the impugned judgment dated 2.9.2002.

Mr. S.K. Gambhir, learned Senior Counsel appearing on behalf of the Appellants, in support of this appeal, contended that:

- i) Having regard to the fact that Respondent No.1 herein filed a suit on 24.9.1979 for setting aside the Deed of Sale dated 1.12.1961, the same was clearly barred by limitation;
- ii) The period of limitation for setting aside the said Deed of Sale, as contended by the plaintiff, did not start running from 22.8.1979, but from the date he attained majority;
- iii) Even assuming that the findings of the learned Appellate Court were correct that the Respondent No.1 was aged about 12 years in 1961 and he attained majority in the year 1969, he was required to file the suit within three years thereafter.
- (iv) The Appellate Court as also the High Court failed to take into consideration the documentary evidence which clearly established that Respondent No.1 was a major on the date of execution of the said Deed of sale.

Mr. Naresh Kaushik, learned counsel appearing on behalf of the Respondents, on the other hand, submitted that

i) On the date of execution of the said deed of sale, Respondent No.1 being a minor, Article 59 of the Limitation Act would have no application;

ii) When a transaction is void, as a suit can be filed at any time, the provisions of the Limitation Act are not attracted.

Strong reliance in this behalf has been placed on Balvant N. Viswamitra & Ors. vs. Yadav Sadashiv Mule (Dead) through LRs. & Ors. [(2004) 8 SCC 706].

The trial court, in view of the pleadings of the parties framed several issues. Issue No.4 framed by the trial court reads as under:

"4. Whether suit is within the period of Limitation?"

The learned trial court found that on 1.12.1961, when the deed of sale was executed, Respondent No.1 was aged about 12 years. However, the trial court opined that the plaintiff-Respondent No.1 failed to prove that he acquired knowledge of the said purported fraudulent execution of the Deed of Sale only on 22.8.1979. On the basis of the said finding the suit was held to be barred by limitation.

The learned First Appellate Court, on the other hand, opined that the suit was not barred by limitation.

The High Court also, as noticed hereinbefore, by reason of the impugned judgment, upheld the judgment of the First Appellate Court.

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.

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 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. 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.

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, 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."

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

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 law, as it would be a nullity.

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.

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 & Anr. vs. Kunchi Amma & Ors. (1891) ILR XIV Mad.

26) and Sheo Shankar Gir vs. Ram Shewak Chowdhri & Ors. [(1897) ILR XXIV Cal. 77].

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

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.

Respondent No.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.

In Ningawwa vs. Byrappa Shiddappa Hireknrabnar & Ors [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:

"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 practiced on her, the same was void. It was, however, held:

" Article 91 of the Indian 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 year's 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, Ex. 45 the appellant knew that her husband prevailed upon her to convey survey 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 "

In Ponnamm Pillai Indira Pillai vs. Padmanabhan Channar Kesavan Channar & Ors. [1968 K.L.T. 673 : AIR 1969 Kerala 163], a full Bench of the Kerala High Court, while considering the effect of Sections 6 and 8 of the Limitation Act, 1908 observed:

"When the law confers the capacity on one in a group to give a valid discharge without the concurrence of the others of an obligation owing to them jointly (in this case to restore the properties trespassed upon), there is no longer any reason for treating the case differently from the case where all the members of a group have ceased to be under disability, without any one of them acquiring the capacity to give a discharge without the concurrence of the others, except that in the former case the disability of the group to give a discharge ceases, when one in the group acquires the capacity to give it without the concurrence of the others; whereas in the latter the disability of the group to give a discharge ceases only when the last of the persons under disability ceases to be under it. As we have said, if in the latter case the suit must be filed within three years of the last of them ceasing to be under disability, we perceive no reason why in the former, the suit need not be filed within the same period, for, in both cases the real disability is the incapacity of the group to give a discharge of an obligation owing to them jointly, though that arises from the

minority, idiocy or insanity of all or some in the group; and in the one case the disability ceases when one in the group acquires the capacity to give a discharge without the concurrence of the others, and in the other when all in the group acquire the capacity to give the discharge jointly. The soul of law is reason and if there is no reason for marking the distinction between the two cases, a strict adherence to the ambit of the expression "cessation of the disability" in Section 8 as confined to the disability mentioned in Section 6, may not be the best means to understand the aim and purpose of the legislature."

Yet again in *P.C.K. Muthia Chettiar & Ors. vs. V.E.S. Shanmugham Chettiar (dead) & Anr.* [AIR 1969 SC 552], it was held that the Limitation Act would also apply in case of fraud.

{See also *Sounder (Executrix of the Will of Rose Maud Gallie, Deceased) vs. Anglia Building Society* [1971] 1 AC 1004} In *Balvant N. Viswamitra & Ors. vs. Yadav Sadashiv Mule (Dead) Through LRS. & Ors.* [(2004) 8 SCC 706], this Court opined that a void decree can be challenged even in execution or a collateral proceeding holding:

"The main question which arises for our consideration is whether the decree passed by the trial court can be said to be "null" and "void". In our opinion, the law on the point is well settled. The distinction between a decree which is void and a decree which is wrong, incorrect, irregular or not in accordance with law cannot be overlooked or ignored. Where a court lacks inherent jurisdiction in passing a decree or making an order, a decree or order passed by such court would be without jurisdiction, non est and void ab initio. A defect of jurisdiction of the court goes to the root of the matter and strikes at the very authority of the court to pass a decree or make an order. Such defect has always been treated as basic and fundamental and a decree or order passed by a court or an authority having no jurisdiction is a nullity. Validity of such decree or order can be challenged at any stage, even in execution or collateral proceedings."

There is another aspect of the matter.

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 No.1 has not been able to rebut the said presumption.

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.

Since the lower Appellate Court and the High Court were not right in law in holding that the suit was not barred by limitation, the judgments and decrees of the lower Appellate Court and that of the High Court are liable to be set aside and dismissal of the suit by the trial court on the ground that it is barred by limitation is liable to be restored. Hence, we allow this appeal, setting aside the judgments and decrees of the High Court and that of the lower Appellate Court and restore the judgment and decree of the trial court. The parties are directed to bear their respective costs in all the courts.