2025 INSC 1105

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 11795 OF 2025
(@SLP(C) No. 24821/2018)

SHANTI DEVI (SINCE DECEASED) THROUGH LRS. GORAN **.....APPELLANT(S)**

VERSUS

JAGAN DEVI & ORS. **..RESPONDENT(S)**

J U D G M E N T

J.B. PARDIWALA, J.

1. Leave granted.

2. This appeal arises from the judgment and order passed by the High Court of Punjab & Haryana dated 22.02.2018 in the Regular Second Appeal No. 2930 of 1996 by which the second appeal filed by the appellant-herein (original defendant) against the judgment and decree dated 07.10.1996 arising from Civil Appeal No. 149 of 1991 passed by the First Appellate court, came to be dismissed.

FACTUAL MATRIX

3. The facts giving rise to this appeal may be summarized as under.

4. For the sake of convenience, the appellant-herein shall be referred to as the original defendant and the respondents-herein shall be referred to as the original plaintiffs.

5. The plaintiffs instituted Civil Suit No. 782 of 1984 in the court of Senior Sub Judge, Gurgaon for permanent injunction restraining the defendant from interfering with their peaceful possession to the extent of one-third share in the agricultural land admeasuring 31 kanals 4 marlas situated within the revenue estate of village Bisar Akbarpur,

Tehsil Nuh, District Gurgaon. In the alternative, the plaintiffs prayed that they be put in joint possession along with the defendant and the sale deed dated 14.06.1973 purported to have been executed by Ram Saran s/o Bhambar and the plaintiff in favor of the defendant be declared as fraudulent, concocted and thereby, void insofar as the share of the plaintiff is concerned.

6. The plaint of Civil Suit No. 782 of 1984 reads thus:

> *"1. That the plaintiff is the lawful owner and in possession to the extent of 1/3rd share in agricultural land bearing Rect. No.40 Killa No. 1/2 (2-0), 9/2 (2-12), 10 (8-0), 11 (8-0), 12/1 (2-12) 20 (8-0), total measuring 31 Kanals 4 marlas, besides other lands situated in the revenue estate of Village Bisar Akbarpur Tehsil Nuh, Distt. Gurgaon. The fard jamabandi for the years 1973-74 and 1978-79 are attached herein.*
>
> *2. That the defendant wrongly claims herself to be the purchaser of the suit land referred to above from one Ram Saran s/o Bhambar on the basis of a fraudulent and concocted sale deed alleged to have been executed on 14.06.1973. The alleged sale deed dated 14.6.73 is total fraudulent, illegal and void and cannot defeat the legal rights and share of the plaintiff in the suit land on the following grounds:-*
>
> > *(a) That the plaintiff never executed on registered sale deed dated 14.6. 73 or of any other date in favor of the defendant and she is still the co-owner in possession to the extent of her share in the land.*
> >
> > *(b) That it seems that the defendant must have got executed and registered the alleged sale deed in her favor by making some impersonation in collusion with the other vendor and witnesses and must have played a fraud on*

the Sub-Registrar to derive wrongful gain for her personal benefit.

(c) That the plaintiff never got any sale consideration of the alleged sale deed and she came to know about this fraudulent transaction only when he came to the village mourn the death of Ram Saran and heard that her land is going to be sold by the defendant without any right in it.

(d) That the alleged sale deed if made by any other person by making impersonation or otherwise, the same does not effect the rights of the plaintiff in the land in suit.

3. That the plaintiff is owner in possession her 1/3rd share in the land and is entitled to file suit for permanent injunction against the defendant restraining her from interfering with the possession and ownership of the plaintiff in the suit land in any manner. In the alternative, if it is found and held that that defendant is in possession of the whole land then the plaintiff is entitled to a decree for joint possession to the extent of 1/3rd share in the land in suit.

4. That the cause of action for the suit arose on or about 4.2.1984 when the plaintiff came to know about the fraudulent transaction and the defendant attempted to sell away to the property of the plaintiff and denied to admit the claim of the plaintiff. Hence this suit.

5. That the suit property is situated within the territorial jurisdiction of this Hon'ble Court, hence this Hon'ble Court has got jurisdiction to try this suit.

6. That the value of the suit for the purpose of court fees and jurisdiction is assessed at Rs.200/- and for relief of possession is also Rs. 100/-. A court fees of Rs.25/- is paid.

7. That the plaintiff, therefore, prays that a decree for permanent injunction be passed in favor of the plaintiff and against the defendant to the effect that the plaintiff is co-owner in possession to the extent of 1/2 share (sic) (1/3 rd share) in the land in suit described in para no.1 of the plaint restraining the

defendant from interfering or dealing with it in any manner. In the alternative a decree for joint possession be passed in favor of the plaintiff and against the defendant in respect of suit land mentioned in para 1 of the plaint declaring the alleged sale deed dated 14.6.73 to be fraudulent and void qua the share of the plaintiff. The costs of the suit be also awarded. Any such other relief which the Ld. Court may deem just and proper be also granted to the plaintiff."

(Emphasis supplied)

7. The written statement filed on behalf of the defendant reads thus:

"Pre Objections

1. That the suit is not maintainable in the present form. The plaintiff has got no right, interest or title in the land in dispute or any part of it.

2. That the plaintiff has got no locus standi nor any cause of action to file the present suit.

3. That the suit for permanent injunction in the alternative for joint possession is not maintainable. It is mandatory to seek declaration

4. That the plaintiff is estopped from filing the present suit by acts, conduct, omission, acquiescence, latches and admission.

5. That the suit is barred by time.

On Merits

1. That Para no.1 of the plaint is wrong and denied. It is wrong and denied that the plaintiff is owner or in possession of the suit land to the extent of 1/3rd share or she has got any right, interest or title in the land in dispute or any part of it.

2. That para no.2 of the plaint alongwith its sub-paras 2(a.) to (d) are wrong and denied. The plaintiff alongwith the brother Ram Saran sold the land in dispute in favour of the defendant

vide sale deed dated 14.6.1973 for sale consideration of Rs.15000/-. The contents of the sale deed were read over and explained to the plaintiff. She had appeared before the Sub Registrar and had admitted and acknowledged the contents of the sale deed. She was identified by Sehdev Sarpanch of village Kawari. It is wrong and denied that the sale deed dated 14.6.1973 is totally fraudulent, illegal and ineffective, the rights of the plaintiff in the suit land on the grounds mentioned in sub-para 2(a) to 2(d) of the plaint or on another grounds.

2(a) Para 2(a) of the plaint is wrong and denied. It is wrong and denied that the sale deed dated 14.6.1973 was not executed by the plaintiff in favour of the defendant. It is wrong and denied that she is still owner of the land in dispute or any part of it. Mutation on the basis of sale deed dated 14.6.1973 was also got sanctioned by the plaintiff in favour of the defendant.

2(b) Para 2(b) of the plaint is wrong and denied. It is wrong and denied that the sale deed was got registered by false impersonation in collusion with Ram Saran, brother of the plaintiff or any other person. It is wrong and denied that any fraud was played on the Sub Registrar to derive wrongful gain for personal benefit. All these allegations are false to the positive knowledge of the plaintiff.

2(c) Para no.2(c) of the plaint is wrong and denied. It is wrong and denied that the plaintiff did not execute the sale deed or she did not receive the sale consideration. It is further wrong and denied that the sale deed was fraudulent transaction or she came to know about the same on the death of Ram Saran. All these allegations are false. It is unthinkable that her brother Ram Saran did not know the plaintiff.

2(d) Para no.2(d) of the plaint is wrong and denied. It is wrong and denied that the sale deed was not executed by the plaintiff or somebody else falsely impersonated in her place. It is wrong and denied that the plaintiff is owner or in possession of the land in dispute as alleged.

3. That para no.3 of the plaint is wrong and denied. It is wrong and denied that the plaintiff has got any right, interest or title in

the suit land or she is owner or in possession of the same or any part of it. It is further wrong and denied that she is entitled to sue for possession in the alternative.

4. That para no.4 of the plaint is wrong and denied. No cause of action ever accrued to the plaintiff. Cause of action if any is bogus, fictitious and imaginary one.
5&6. Paras no.5 and 6 of the plaint are legal.

7. That para no.7 of the plaint is wrong and denied. It is, therefore, humbly prayed that the suit of the plaintiff may kindly be dismissed with costs. Since the suit of the plaint is false, frivolous and vexatious, therefore, the plaintiff be burdened with special costs U/s 35-A C.P.C."

8. The Trial Court framed the following issues:

"1. Whether the sale deed dated 14.6.1973 is illegal, fraudulent and ineffective on the grounds mentioned in the para no.2 of the plaint? OPP
2. Whether the plaintiff is in joint possession of the suit property? OPP.
3. Whether the suit is not maintainable? OPD
4. Whether the plaintiff has no locus standi and cause of action to file the suit? OPD
5. Whether the plaintiff is estopped from filing the present suit by her own act and conduct? OPD.
6. Whether the suit is time barred? OPD
7. Relief."

9. All the above referred issues framed by the Trial Court came to be answered against the plaintiffs. The suit ultimately came to be dismissed *vide* the judgement and decree dated 14.10.1991.

10. The plaintiffs being dissatisfied with the judgment and decree passed by the Trial Court preferred First Appeal before the district court. The First Appeal came to be registered as Civil Appeal No. 149 of 1991. The First Appeal came to be allowed. The suit of the plaintiffs came to be decreed. On the question of limitation, the First Appellate Court observed as thus:

> *"Lastly the question of limitation has been raised in the present proceedings. As per the defendant the present suit should have been filed within three years of the sanction of mutation. He mainly reliance on 1996 (1) PLR 482 The State of Punjab Vs. Babu Singh which lays down that illegal or void order have to be got set aside from the court of competent jurisdiction and limitation for the same is three years from the date of passing of the order. On the other hand, the counsel for plaintiff-appellant has relied upon Article 65 in order to assert that the period of limitation shall be 12 years for getting the relief of possession from the date when the possession of the defendant would be deemed to be adverse to that of the plaintiff. Accordingly he argued that even if it is presumed that the defendant came into adverse possession from the date of execution of the present sale deed even then the plaintiff was entitled to get the relief of possession within the period of 12 years and the suit was filed within that period. Merely because it was filed after about 11 years cannot deprive the plaintiff of the relief. The said arguments of the plaintiff appellant is convincing. She has claimed relief of joint possession. It has already been held that the transaction in question was void and Risali had never executed the sale deed in question. So under these circumstances the plaintiff could have maintained action to obtain possession of the property within the period of 12 years from the date of knowledge. So even if the knowledge party is ignored still the suit has been filed within 12 years from the date of sale and the same is maintainable."*
>
> (Emphasis supplied)

11. The defendants being dissatisfied with the judgment and decree passed by the First Appellate court preferred Second Appeal No. 2930 of 1996 in the High Court.

12. The High Court *vide* its impugned judgment and order dismissed the appeal thereby affirming the judgment and order passed by the First Appellate court decreeing the suit in favour of the plaintiffs. However, insofar as the issue of limitation was concerned, the High Court differed with the First Appellate Court and came to the conclusion that it is Article 59 of the Limitation Act, 1963 and not Article 63 that would be applicable to the facts of the matter.

13. The High court while dismissing the Second Appeal held as under:

> *"I have heard the learned counsel for the parties, appraised the judgments and decrees as well as record of both the Courts below and of the view that there is no force and merit in the submissions of Mr. Keshav Pratap Singh.*
>
> *In my view, limitation would not come in the way of the plaintiff-respondents, for, the suit can be filed from the date of the knowledge as per the provisions of Article 59 of the Limitation Act, which reads thus:-*

59.	*To cancel or set aside an instrument or decree or for the rescission of a contract*	*Three years*	*When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract*

			rescinded first becomes known to him.

The defendant for the best known reasons has not examined any expert in his evidence to counter and rebut the testimony of PW4. Appellant-defendant Shanti Devi (since deceased) represented through legal representatives made a statement that she was present at the time of execution and registration of the sale deed and one Rasali was also present to whom she knew very well. Rasali had also put her thumb impressions on the sale deed in her presence but in cross-examination, she stated that she was not in a position to identify Rasali Devi. If at all, Rasali was known to Shanti Devi, she could have been very bold to identify Rasali. Endorsement made by Sub-Registrar showed that her husband Bagdawat had appeared on her behalf before the Sub Registrar and the aforementioned document did not carry the thumb impression/signatures of Shanti Devi. The other witness to the sale deed, i.e., Budhu, an attesting witness of the document was none else but the real brother of Shanti Devi, obviously he was expected to make a favourable deposition. He also admitted that sale deed was thumb marked by Shanti Devi, whereas, as noticed above, it was not Bagdawat, husband of Shanti Devi, for the reasons best known had not stepped into witness box. The second witness, Sahdev, Sarpanch had died before the statement of Budhu could be recorded. Shanti Devi admitted that Sahdev was well acquainted with his brother Budhu. Thus, defendant failed to prove that there was any impartial witness. Things do not end here. The plaintiffs had moved an application for directing the defendant to produce the original sale deed and answer was that the original had been misplaced. Defendant had admitted that prior to sale deed, there was an agreement to sell but the same has also not seen the light of day. On the contrary, expert compared the disputed thumb impressions found on the Special Power of Attorney Ex.P2 and thumb impressions put by Rasali on her statement recorded by the Court on 20.03.1984. Special Power of Attorney Ex.P2 had been proved through the testimony of PW3, who stated that executant had put her thumb impressions on the said document after it was read over and explained. The defendant failed to put

any cross-examination to the aforementioned witness. It is settled law that in case, statement made in examination-in-chief is not subjected to cross-examination, the same would be admitted.

The defendant in the evidence did not dispute that Rasali had not appeared before the Court on 20.03.1984. The handwriting expert also compared the thumb impressions on two affidavits executed by Rasali, i.e., on 27.02.1984 and 28.02.1984. Both the affidavits were duly attested by Oath Commissioner and identified by K.S. Jain, Advocate. The expert also examined the thumb impressions on the plaint and vakalantnama to form an opinion that they were not of the same person, therefore, there was no occasion for the Lower Appellate Court to discard the report of expert. In my view, evidence brought on record by the plaintiffs un-clinchly proved that Rasali had never executed disputed sale deed.

There is another aspect of the matter, mutation Ex.DE was affected on the basis of the sale deed which also carried a presumption of truth under Section 44 of Punjab Land Revenue Act, unless the same is rebutted. No evidence has been led to rebut the same. Even from perusal of Ex.D3, it was not proved that Rasali at the time of attestation and sanction was there. Defendant miserably failed to prove that document actually executed by Rasali. There is no force in the submission of Mr. Keshav Pratap Singh that improvement made by the defendant was in the knowledge of the plaintiffs, and therefore, suit was barred by law of limitation but fact of the matter is that no such improvement had been proved, therefore, the pleading was beyond evidence. The suit could not be said to be barred by law of limitation as relief of declaration qua joint possession was sought as every owner is owner of each and every inch of land until the same is partitioned.

As an upshot of my findings, I do not find any illegality and perversity in the findings under challenge which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeal.

No other argument has been raised. Resultantly, the appeal stands dismissed."

(Emphasis supplied)

14. In such circumstances referred to above, the legal heirs of the original defendant are here before us with the present appeal.

15. Upon a perusal of the facts of the case in hand, this Court *vide* order dated 03.02.2025, confined itself to the question whether the plaintiff's suit was time-barred or not.

SUBMISSIONS ON BEHALF OF THE APPELLANT/ ORIGINAL DEFENDANT

16. The learned counsel appearing for the appellant vehemently submitted that the High court committed a serious error in dismissing the second appeal thereby affirming the judgment and decree passed by the First Appellate court in favor of the plaintiffs. The counsel would submit that the suit itself was barred by limitation as the same had been filed on 28.02.1984 i.e., after a delay of more than 11 years from the date of the execution of the sale deed dated 14.06.1973.

17. It was argued that the Trial Court rightly dismissed the suit being barred by limitation. The First Appellate court wrongly invoked Article 65 of the Limitation Act, 1963 to bring the suit within the period of limitation. According to the learned counsel, it is Article 56 of the Limitation Act, 1963 that governs the period of limitation in the present case. It was also argued that the original plaintiff, namely, Rasali failed to enter the witness box in the presence of the defendant. Moreover, Sibba s/o Lal Singh, in whose favour the plaintiff had executed a power of attorney to pursue the case, never entered the witness box.

18. In the last, the learned counsel appearing for the defendant submitted that heavy burden of proof is cast upon a person impugning the transaction to show that the same is sham or fraudulent one. According to the learned counsel a distinction should be borne in mind in regard to the nominal nature of the transaction which is no transaction in the eye of law at all and the nature and character of a transaction as reflected in a deed of conveyance. In other words, according to the learned counsel appearing for the defendant, the initial burden of proving the transaction as bogus or sham was on the plaintiffs and they could be said to have miserably failed to lead any

evidence in that regard. In such circumstances, the onus could not be said to have shifted upon the defendant to establish or prove the valid execution of the sale deed. The registered document and the registration of the sale deed reinforced the valid execution of the sale deed. He would submit that a registered document carries with it a presumption that it was validly executed. It is for the party challenging the genuineness of the transaction to rebut such presumption.

19. In such circumstances referred to above, the learned counsel prayed that there being merit in his appeal, the same may be allowed and the impugned judgment and order passed by the High Court be set aside and the impugned judgment and order passed by the Trial Court dismissing the suit, be affirmed.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS/ORIGINAL PLAINTIFFS

20. On the other hand, the learned counsel appearing for the respondents-herein submitted that no error not to speak of any error of law could be said to have been committed by the High Court in passing the impugned judgment and order. It was argued that there are concurrent findings recorded by the First Appellate court and the

High Court respectively that the plaintiff was not a party to the sale deed of 1973 i.e., the sale deed in question. In other words, the plaintiff had not put her thumb impression on the sale deed.

21. It was argued that it is settled law that when an instrument of sale of an immovable property is not executed by the owner, then such a sale deed is *void ab initio* and is considered a nullity *qua* the owner. In such a case, the owner is not required to seek cancellation of such an instrument or seek a declaration that such an instrument is void. This is the reason why the plaintiff had not sought the cancellation of the sale deed dated 14.06.1973 in the present case and therefore, there arises no question of application of Article 59 of the Schedule to the Limitation Act, 1963. The counsel has placed reliance on several decisions to emphasize that when the instrument is void/*void ab initio* and not voidable, it would be Article 65 which would apply to a suit for possession based on title filed by the plaintiffs.

22. In the last, it was argued that since the alleged possession of the defendant over the suit property can at best be considered to have been adverse to the plaintiff from the date of execution of the sale deed dated 14.06.1973, the suit having been filed on 28.02.1984, i.e.,

within 12 years of the execution of the impugned sale deed, cannot be said to be barred by limitation as per Article 65.

23. In such circumstances referred to above, the learned counsel prayed that there being no merit in this appeal the same may be dismissed.

ANALYSIS

24. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the High Court committed any error in passing the impugned judgment and order?

25. The crux of the issue seems to be whether it is Article 65 or Article 59 of the Schedule to the Limitation Act, 1963, which would apply to the present facts in hand. The aforesaid Articles are reproduced as under:

59.	*To cancel or set aside an instrument or decree or for the recission of a contract*	*Three years*	*When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him.*
65.	*For possession of immovable property or any interest therein based on title*	*Twelve years*	*When the possession of the defendant becomes adverse to the plaintiff.*

26. The counsel for the plaintiff would submit that it is Article 65 which must be applied to the present suit for possession since the sale deed dated 14.06.1973 was found to be fraudulent and therefore, void. Insofar as the question whether the aforesaid sale deed was void, the First Appellate Court observed as thus:

> *"[…] In my view, the evidence led by the plaintiff leaves no room for doubt that Smt. Rasali never executed the disputed sale deed. According the finding on issue no. 1 given by the trial court was incorrect and is reversed.*
> *-xxx-*
> *[…] But here, the said mutation was based on void transaction, as Smt. Risali had never executed the sale deed in question. So the question of estoppels against the plaintiff does not arise in the present proceedings."*

27. The High Court has also expressed its agreement with the aforesaid finding of the First Appellate Court and observed that:

> "*In my view, evidence brought on record by the plaintiffs un-clinchly proved that Rasali had never executed the disputed sale deed.*"

28. In ***State of Maharashtra v. Pravin Jethalal Kamdar*** reported in **2000 SCC OnLine SC 522**, this Court held that as far as void and *non-est* documents are concerned, it would be enough for the plaintiff to file a *simpliciter* suit for possession to which Article 65 of the Limitation Act, 1963 would apply. Therein, Section 27(1) of the Urban

Land (Ceiling and Regulation) Act, 1976 which came into force w.e.f. 17.02.1976 imposed a restriction on the transfer of any urban or urbanisable land with a building or part of such building, which was within the ceiling limit. In other words, Section 27(1) sought to affect the right of a person to dispose of his urban property within the ceiling limit. Under the Act, the competent authority of the State of Maharashtra had to grant permission if such a person wanted to sell the property to a prospective purchaser. However, when such a permission was asked for in the facts of the aforesaid case, the same was denied by the competent authority and it instead exercised the option to buy the same on behalf of the State *vide* its order dated 26.05.1976. Pursuant to such order, a sale deed dated 23.08.1976 was executed between the plaintiff and the State for the same sale consideration that would have been paid by the prospective purchaser. Subsequently, the decision of this Court in ***Bhim Singhji v. Union of India*** reported in **(1981) 1 SCC 186** held Section 27(1), insofar as the restriction it placed as mentioned above, to be invalid. In this background, it was opined as follows:

i. ***First,*** the contention of the State that it is Article 58 of the Limitation Act, 1963 that would apply, was rejected. It was held that the suit is primarily one for possession of property based

upon title. It was observed that owing to the decision in ***Bhim Singhji*** *(supra)*, the order dated 26.05.1976 along with the sale deed dated 23.08.1976 became *void ab intio* and without jurisdiction. Therefore, it was not necessary for the plaintiff to claim any separate declaration that they are void. The plea about their invalidity could be raised in the course of any proceedings. Therefore, it is Article 65, which deals with a suit for possession based on title, that would apply from the date on the which the possession of the defendant State became adverse to the plaintiff.

ii. ***Secondly***, though the plaintiff sought a declaration that the order dated 26.05.1976 and the sale deed dated 23.08.1976 were void, yet it was held that the same would be of no consequence insofar as the question of limitation is concerned. The fact would still remain that the possession of the property was taken by the defendants *via* void documents. Therefore, such documents could be ignored and a suit for possession *simpliciter* for which the period of limitation prescribed under Article 65, i.e., 12 years, could be filed. In the course of such proceedings, it could be contended by the plaintiff that the documents are a nullity.

The relevant observations are reproduced hereinbelow:

"*4. Article 58 of the Limitation Act, 1963, prescribes limitation of three years from the date when the right to sue first accrues to obtain a declaration. Under Article 65, the period of limitation prescribed for filing a suit for possession of immovable property or any interest therein based on title is 12 years from the date when possession of the defendants becomes adverse to the plaintiff. The contention urged on behalf of the State Government was that Article 58 of the Limitation Act was applicable as the plaintiff had sought declaration about the invalidity of the order dated 26-5-1976 and sale deed dated 23-8-1976 and that the period of limitation of three years had to be computed from 26-5-1976 and, therefore, the suit filed on 22-8-1988 was hopelessly barred by time. This contention was rejected by the High Court as also by the trial court. The contention urged on behalf of the plaintiff and which has been accepted is that the suit is basically for possession of the property based upon title and the sale deed dated 23-8-1976 and the order dated 26-5-1976 being void ab initio and without jurisdiction, a plea about its invalidity can be raised in any proceedings and it is not necessary to claim any declaration and thus Article 65 which deals with suit for possession based on title would be applicable from the date, the possession of the defendant becomes adverse to the plaintiff. The High Court held that in view of the order and the sale deed being null and void and without jurisdiction, the same have no existence in the eye of the law and the plea about invalidity of these documents can be raised in any proceedings and no separate declaration is necessary to be sought. It held that the suit for possession would be governed by Article 65 of the Limitation Act, 1963. It was further held that the suit is within time even from the date when the possession of the suit property was taken on the execution of the sale deed on 23-8-1976.*

5. As already noticed, in Bhim Singhji case [(1981) 1 SCC 166] Section 27(1) insofar as it imposes a restriction on transfer of any urban or urbanisable land with a building or a portion of such building, which is within the ceiling area, has been held to be invalid. Thus, it has not been and cannot be disputed that the order dated 26-5-1976, was without jurisdiction and a nullity.

Consequently, the sale deed executed pursuant to the said order would also be a nullity. It was not necessary to seek a declaration about the invalidity of the said order and the sale deed. The fact of the plaintiff having sought such a declaration is of no consequence. When possession has been taken by the appellants pursuant to void documents, Article 65 of the Limitation Act will apply and the limitation to file the suit would be 12 years. When these documents are null and void, ignoring them a suit for possession simpliciter could be filed and in the course of the suit it could be contended that these documents are a nullity. In Ajudh Raj v. Moti [(1991) 3 SCC 136] this Court said that if the order has been passed without jurisdiction, the same can be ignored as a nullity, that is, non-existent in the eye of the law and it is not necessary to set it aside; and such a suit will be governed by Article 65 of the Limitation Act. The contention that the suit was time-barred has no merit. The suit has been rightly held to have been filed within the period prescribed by the Limitation Act."

(Emphasis supplied)

29. This Court in ***Prem Singh v. Birbal*** reported in **(2006) 5 SCC 353**, discussed the position of law as to when Article 59 of the Limitation Act, 1963 would apply and opined as follows:

i. ***First,*** that Article 59 of the Limitation Act, 1963 would only encompass within its fold fraudulent transactions which are 'voidable' transactions and not those that are 'void'. In other words, Article 59 would apply only where an instrument is *prima facie* valid and not to those instruments which are presumptively invalid.

ii. ***Secondly,*** that when the document in question is *void ab initio*/or void, a decree for setting aside the same would not be necessary since such a transaction would be *non-est* in the eyes of law, owing to it being a nullity.

iii. ***Thirdly,*** a fine distinction was drawn between fraudulent misrepresentation as regards the 'character of the document' and fraudulent misrepresentation as regards the 'contents of a document'. It is only in the former situation that the instrument would be void and, in the latter, it would remain voidable. To put it simply, Article 59 would not govern the period of limitation in respect of a void transaction.

iv. ***Lastly,*** that if a deed was executed by the plaintiff when he was a minor *and it was thereby void,* he had two options to file a suit to get the property conveyed thereunder i.e., he could either file the suit within 12 years of the deed or within 3 years of attaining majority.

The relevant observations are reproduced as under:

> "*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.*
>
> *-xxx-*

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] .)

-xxx-

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."*

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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."

(Emphasis supplied)

30. In the decision of this Court in ***Hussain Ahmed Choudhury v. Habibur Rahman*** reported in **2025 SCC OnLine SC 892**, where one of us, J.B. Pardiwala J., was a member of the Bench, it was reiterated

that a person who is not a party to an instrument would not be obliged in law to seek its cancellation. The reason being that such an instrument would neither be likely to affect his title nor be binding on him. However, such a plaintiff must at least seek a declaration that the said instrument is not binding on him or that is invalid insofar as he is concerned. The relevant observations are reproduced hereinbelow:

> "*30. As observed aforesaid, a plaintiff who is not a party to a decree or a document, is not obligated to sue for its cancellation. This is because such an instrument would neither be likely to affect the title of the plaintiff nor be binding on him. We have to our advantage two very old erudite judgments of the Madras High Court and one of the Privy Council on the subject.*
>
> *31. In Unni v. Kunchi Amma reported in 1890 SCC OnLine Mad 5, the legal position has been thus explained:*
>
> > *"If a person not having authority to execute a deed or having such authority under certain circumstances which did not exist, executes a deed, it is not necessary for persons who are not bound by it, to sue to set it aside for it cannot be used against them. They may treat it as nonexistent and sue for their right as if it did not exist."*
> >
> > *(Emphasis supplied in original)*
>
> *32. The same principle has been distinctly laid down by the Privy Council in Bijoy Gopal Mukerji v. Krishna Mahishi Debi, reported in 1907 SCC OnLine PC 1, where the jural basis underlying such transactions was pointed out. In that case, the reversioner sued for a declaration that a lease granted by the widow of the last male owner was not binding on him and also for khas possession. It was objected that the omission to set aside the lease by a suit instituted within the time limit prescribed by Article 91 of the Indian Limitation Act, 1877 was*

fatal to the suit. The following observations which are equally applicable to the case at hand, are apposite:

> *"A Hindu widow is not a tenant for life, but is owner of her husband's property subject to certain restrictions on alienation and subject to its devolving upon her husband's heirs upon her death. But she may alienate it subject to certain conditions being complied with. Her alienation is not, therefore, absolutely void, but it is prima facie voidable at the election of the reversionary heir. He may think fit to affirm it, or he may at his pleasure treat it as a nullity without the intervention of any Court, and he shows his election to do the latter by commencing an action to recover possession of the property. There is, in fact, nothing for the Court either to set aside or cancel as a condition precedent to the right of action of the reversionary heir. It is true that the appellants prayed by their plaint for a declaration that the ijara was inoperative as against them, as leading up to their prayer for delivery to them of khas possession. But it was not necessary for them to do so, and they might have merely claimed possession, leaving it to the defendants to plead and (if they could) prove the circumstances, which they relied on, for showing that the ijara of any derivative dealings with the property were not in fact voidable, but were binding on the reversionary heirs."*

33. In fact, it is logically impossible for a person who is not a party to a document or to a decree to ask for its cancellation. This is clearly explained by Wadsworth, J., in the decision rendered in Vellayya Konar (Died) v. Ramaswami Konar, reported in 1939 SCC OnLine Mad 149, thus:

> *"When, the plaintiff seeks to establish a title in himself and cannot establish that title without removing an insuperable obstruction such as a decree to which he has been a party or a deed to which he has been a party, then quite clearly he must get that decree or deed cancelled or declared void 'in toto', and his suit is in substance a suit for the cancellation of the decree or deed even though it be framed as a suit for declaration. But when he is seeking to establish a title and finds himself threatened by a decree or a transaction between third parties, he Is not in a*

> *position to get that decree or that deed cancelled 'in toto'. That is a thing which can only be done by parties to the decree or deed or their representatives. His proper remedy therefore in order to clear the way with a view to establish his title, is to get a declaration that the decree or deed is invalid so far as he himself is concerned and he must therefore sue for such a declaration and not for the cancellation of the decree or deed."*
>
> *(Emphasis supplied in original)*

> *34. Therefore, filing a suit for cancellation of a sale deed and seeking a declaration that a particular document is inoperative as against the plaintiff are two distinct, separate suits. The plaintiff in the present case, not being the executant of the sale deed dated 05.05.1997 executed in favour of the respondent no. 1 (original defendant no. 14), was therefore, not obligated to sue for its cancellation under Section 31 of the Act, 1963."*
>
> (Emphasis supplied)

31. As per the dictum in ***Prem Singh*** *(supra)*, this Court, in order to ascertain whether Article 65 of the Limitation Act, 1963 would apply to the present factual scenario, has to first determine whether the fraud was alleged as regards the contents of the sale deed dated 14.06.1973 or the character of such sale deed. Both the First Appellate Court as well as the High Court have arrived at the finding that the plaintiff had never executed the said sale deed in the first place as it was proved that it was not her thumb impression that was affixed therein. Therefore, this finding goes to the character of the sale deed and thereby, renders it void/*void ab initio*. Hence, as per this decision, there remained no reason for the plaintiff to seek for its

cancellation. The original sale deed also was not produced before the Trial Court by the defendants in order to rebut the doubt cast upon the veracity of the said sale deed. Consequently, Article 59 of the Limitation Act, 1963 would find no application to the case in hand.

32. In ***Hussain Ahmed Choudhury*** *(supra),* it was clearly opined that a plaintiff who is not a party to the instrument in question need not seek its cancellation. We are not oblivious to the fact that in a situation where the plaintiff was not a party to the instrument, the said decision laid down a requirement that a declaration must be sought to the effect that the said instrument was not binding on the plaintiff. However, the said decision clarified that whether the plaintiff has sought such a declaration or not could be culled out from a holistic reading of the plaint along with the relief(s) sought. In cases where the character of the sale deed is assailed as being fraudulent, this requirement is implicitly satisfied since the very averment that the sale deed was fraudulent or a sham and bogus transaction by itself indicates that the plaintiff did not intend to be bound by it. Therefore, this requirement too, could be said to have been satisfied by the plaintiff in the present case.

33. Further, as per ***State of Maharashtra*** *(supra)*, it would be of no consequence even the plaintiff in one of his prayers, seeks a declaration that the sale deed is a nullity or invalid insofar as he is concerned, since such an instrument would anyway be void owing to it being fraudulent. Therefore, the period of limitation for a suit for possession based on title would continue to be governed by Article 65. In other words, the addition of such a prayer would not influence the period of limitation within which such a suit must be filed.

34. We may look at the matter from one another angle. Apart from the aspect of fraud, the decision of this Court in ***Kewal Krishnan v. Rajesh Kumar and Others*** reported in **(2022) 18 SCC 489**, while looking into whether the defendants had paid any sale consideration to the plaintiff while purchasing the plaintiff's share in the property, held as follows:

    i. ***First***, that the sale of an immovable property would have to be for a price and such a payment of price is essential, even if it is payable in the future. If a sale deed is executed without the payment of price, it is not a sale at all in the eyes of law, specifically under Section 54 of the Transfer of Property Act,

1882. *Such a sale without consideration would be void and would not affect the transfer of the immovable property.*

ii. ***Secondly,*** that, in the said case, the defendants could not rebut the allegation of the plaintiff that no sale consideration was paid as no evidence was adduced to indicate - (a) the actual payment of the price mentioned in the sale deeds and, (b) that the defendants had any earning capacity at the time of the transaction such that the sale consideration could have been paid. As such the sale deed being void for want of valid consideration, could not be said to have affected the one-half share of the plaintiff in the suit properties nor have conferred any right of title on the defendants. In fact, it was held that the sale deeds were a sham and must be ignored.

iii. ***Lastly,*** it was reiterated that a document that is void need not be challenged by seeking a declaration as the said pleas can be set up and proved even in collateral proceedings.

The relevant observations are thus:

> *"18. Section 54 of the Transfer of Property Act, 1882 (for short "the TP Act") reads thus:*
>
> > *"**54. "Sale" defined**.—"Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.*

> ***Sale how made***.—*Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.*
> *In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.*
> *Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.*
> ***Contract for sale***.—*A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.*
> *It does not, of itself, create any interest in or charge on such property."*

Hence, a sale of an immovable property has to be for a price. The price may be payable in future. It may be partly paid and the remaining part can be made payable in future. The payment of price is an essential part of a sale covered by Section 54 of the TP Act. If a sale deed in respect of an immovable property is executed without payment of price and if it does not provide for the payment of price at a future date, it is not a sale at all in the eye of the law. It is of no legal effect. Therefore, such a sale will be void. It will not effect the transfer of the immovable property.

19. Now, coming back to the case in hand, both the sale deeds record that the consideration has been paid. That is the specific case of the respondents. It is the specific case made out in the plaints as originally filed that the sale deeds are void as the same are without consideration. It is pleaded that the same are sham as the purchasers who were minor sons and wife of Sudarshan Kumar had no earning capacity. No evidence was adduced by Sudarshan Kumar about the payment of the price mentioned in the sale deeds as well as the earning capacity at the relevant time, of his wife and minor sons. Hence, the sale deeds will have to be held as void being executed without consideration. Hence, the sale deeds did not affect in any manner one half-share of the appellant in the suit properties. In

fact, such a transaction made by Sudarshan Kumar of selling the suit properties on the basis of the power of attorney of the appellant to his own wife and minor sons is a sham transaction. Thus, the sale deeds of 10-4-1981 will not confer any right, title and interest on Sudarshan Kumar's wife and children as the sale deeds will have to be ignored being void. It was not necessary for the appellant to specifically claim a declaration as regards the sale deeds by way of amendment to the plaint. The reason being that there were specific pleadings in the plaints as originally filed that the sale deeds were void. A document which is void need not be challenged by claiming a declaration as the said plea can be set up and proved even in collateral proceedings.

20. Hence, the issue of bar of limitation of the prayers for declaration incorporated by way of an amendment does not arise at all. The additional submissions made by the respondents on 16-11-2021 have no relevance at all.

21. As no title was transferred under the said sale deeds, the appellant continues to have undivided half-share in the suit properties. That is how the District Court passed the decree holding that the appellant is entitled to joint possession of the suit properties along with Sudarshan Kumar. Therefore, for the reasons recorded above, by setting aside the impugned judgment and order [Rajesh Kumar v. Kewal Krishan, 2015 SCC OnLine P&H 20782] of the High Court, the decree passed by the District Court deserves to be restored."

(Emphasis supplied)

35. As far as the facts of the present matter are concerned, the plaintiff specifically averred that she never obtained any sale consideration from the defendant. On this aspect, the plaint reads as follows:

"(c) *That the plaintiff never got any sale consideration of the alleged sale deed and she came to know about this fraudulent transaction only when she came to the village mourn the death*

of Ram Saran and heard that her land is going to be sold by the defendant without any right in it"

36. Admittedly, the sale consideration is Rs. 15,000/- as per the sale deed. The sale deed indicated that, out of the total sale consideration, the plaintiff and the other vendor i.e., Ram Saran, had already allegedly received Rs. 9000/- from the defendant and that the remaining amount of Rs. 6000/- would be received at the time of the execution of the sale deed, in front of the Registrar. The relevant portion of the sale deed reads thus:

"[…] now we with our own sweet will have sold the above land measuring 31 kanal 4 marla, along with all the rights to Smt. Shanti wife of Bagdawat son of Harnath, resident of Akbarpur, for Rs. 15000/- . Possession has been delivered to the vendee. Out of the total sale consideration, we have already received Rs. 9000/- from the vendee and remaining amount of Rs. 6000/- will be received in front of the Sub Registrar. Expenses of the stamp papers have been borne by the vendee itself […]"

37. The endorsement made by the Sub Registrar at the time of the execution of the sale deed, reads thus:

"*That the contents of the sale deed have been read over and understood to Ram Saran 2/3rd share, Risali 1/3rd share, and Bhadgawat husband of vendee. They have verified the same and the vendors have received Rs. 6000/- from the husband of the vendee in the presence of the sub-registrar. Both the parties have been identified by Mahadev Singh Sarpanch, and witness no. 2 Budhu.[…]"*

38. Concurrent findings of both the First Appellate Court and the High Court indicated that the husband of the defendant i.e., one Bagdawat, who had allegedly given the remaining sale consideration of Rs. 6,000/- during the time of execution of the sale deed, had not stepped into the witness box. Furthermore, one of the attesting witnesses to the execution of the sale deed i.e., the Sarpanch had also died before his deposition could be recorded. One Budhu, who was the second attesting witness, was the brother of the defendant and both the Courts had doubted his testimony as being partial to the defendant. All in all, there was no witness who could substantiate the case of the defendant that there was part-payment of the sale consideration, i.e., Rs. 6,000/- during the time of execution of the sale deed. Furthermore, no evidence was adduced by the defendant to prove that even the initial amount of Rs. 9,000/- which was purportedly paid before the execution of the sale deed was actually received by the plaintiff. Therefore, the averment of the plaintiff in the plaint, that she had not received the sale consideration, had not been otherwise proven as false. In such circumstances as well, i.e., in the absence of the sale consideration being tendered, the sale deed would be void and the plaintiff would not be required to seek its cancellation. Therefore,

Article 59 of the Limitation Act, 1963 could not be said to be applicable to the present facts.

39. The First Appellate Court had rightly observed that the plaintiff had claimed the relief of joint possession. It had also arrived at the finding that the transaction in question was void. To put it simply, in the eyes of the law, the plaintiff could not be said to have executed the sale deed. Therefore, the plaintiff could indeed have maintained an action to obtain possession of the property on the basis of her title and filed the same within the period of 12 years from the date of knowledge that the possession of the defendant was adverse to that of the plaintiff. Even if the date of execution of the sale deed, i.e., 14.06.1973 is considered, the suit having been filed on 28.02.1984, i.e., almost 11 years later, could be said to be well within limitation as stipulated under Article 65.

40. In the overall view of the matter, we have reached the conclusion that the High Court could be said to have committed an error insofar as observing that it is Article 59 and not Article 65 of the Schedule to the Limitation Act, 1963, which would apply to the case in hand. However, irrespective of the question of which Article of the Limitation Act, 1963 would be applicable to the suit instituted by the present plaintiff, the

suit could be said to have been filed within limitation. Therefore, apart from clarifying the correct position of law, we find no infirmity in the ultimate conclusion that the High Court arrived at as far as the maintainability of the suit on the aspect of limitation is concerned.

41. Therefore, this appeal fails and is hereby, dismissed.

.....J.
(J.B. PARDIWALA)

.....J.
(R. MAHADEVAN)

New Delhi
12th September, 2025.