REPORTABLE

2025 INSC 552

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 11061 OF 2024
[Arising out of SLP(C) NO. 2998 OF 2022]

RAJEEV GUPTA & ORS. ...APPELLANTS

VERSUS

PRASHANT GARG & ORS. ...RESPONDENTS

J U D G M E N T

DIPANKAR DATTA, J.

THE APPEAL

1. This appeal, by special leave, is at the instance of the second to fifth defendants[1] in a suit for cancellation of sale deeds, recovery of possession and injunction. The appellants mount a challenge to the judgment and decree dated 21st September, 2021 of the High Court of Judicature at Allahabad[2], dismissing their second appeal under Section 100 of the Code of Civil Procedure, 1908[3]. In such appeal, the first appellate judgment and decree was under challenge which reversed

[1] appellants, hereafter
[2] High Court, hereafter
[3] CPC, hereafter

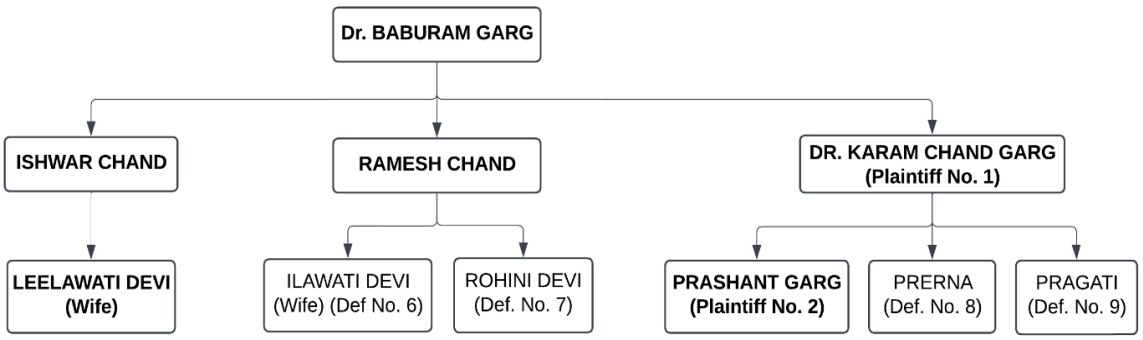
the decree of the trial court of dismissal of the civil suit instituted by the respondent 1.

RESUME OF FACTS

2. The factual conspectus of the case, to the extent relevant for adjudication of the present *lis*, is set out below:

i) The common ancestor of the parties, Dr. Babu Ram Garg, allegedly executed a will dated 17th October, 1951[4], bequeathing House No. 49/1, Nai Mandi, Muzaffarnagar[5] in favour of his two sons - Ishwar Chand and Dr. Karam Chand. The third son, i.e., Ramesh Chand was not given a share in the suit property; instead, he was bequeathed the business of a pharmacy and a sum of Rs 5,000/- (Rupees five thousand only). The suit property was a two storeyed building, with shops being run in part / portion of the ground floor.

ii) The genealogical chart of the family is reproduced below for the sake of convenience:



[4] WILL, hereafter
[5] suit property, hereafter

iii) In the year 1956, a family settlement was entered into by the parties concerned in terms whereof the names of Leelawati and Ramesh Chand were mutated in respect of the suit property, with the remaining properties being allotted to Dr. Karam Chand.

iv) After the death of Ishwar Chand in 1984, a civil suit[6] was filed by his wife Leelawati against Ramesh Chand, praying that she be declared the owner of the western portion of the suit property admeasuring 48 ft x 83 ft 6 inches, leaving the eastern portion of the house, admeasuring 96 ft 6 inches x 48 ft for Ramesh Chand. The said suit stood decreed on 30th May, 1987 by compromise.

v) Litigation *inter se* the family members did not end with the first suit being decreed on compromise. The same continued with Dr. Karam Chand instituting a suit[7] against his brother Ramesh Chand as well as the heirs of late Ishwar Chand, whereby permanent injunction was sought restraining them from alienating the suit property. An *ex-parte* ad-interim injunction was granted *vide* order dated 15th June, 1992 as regards the suit property. Such order does not seem to have been served upon Ramesh Chand or Ishwar Chand's heirs.

vi) During the pendency of the second suit, on 16th June, 1992 and 29th June, 1992 to be precise, two sale deeds were executed *qua* the southern and eastern portion of the suit property by Ramesh

[6] Original Suit No. 307/1987, referred to as the "first suit" hereafter
[7] Original Suit No. 458/1992, referred to as the "second suit" hereafter

Chand, in favour of the appellants for a total consideration of Rs 80,000/- (Rupees Eighty thousand only). The deeds were duly registered, and entered in the relevant book (Book No.1) on 17th June, 1992 and 30th June, 1992, respectively. It is material to note that the appellants were not wholly unknown to the family; they resided in the building immediately to the south of the suit property.

vii) During the pendency of the second suit instituted by Dr. Karam Chand, again a compromise was arrived at between Dr. Karam Chand and Ishwar Chand's heirs on 28th September, 1992. In terms thereof, Dr. Karam Chand relinquished his rights in respect of the western portion of the house which had continuously been in the possession of Ishwar Chand's family.

viii) In yet another seemingly filial turn of events, the second suit was finally compromised between Dr. Karam Chand and Ramesh Chand. Dr. Karam Chand's absolute rights over the eastern portion of the suit property having been accepted, Ramesh Chand was permitted to remain in possession thereof. In view of the latter's unemployment, he was allowed to use part of the rental receipts from the shops to support his family, with the remainder being given to Dr. Karam Chand. Lastly, the revenue records were to be mutated to insert Dr. Karam Chand's name.

ix) It is the appellants' claim that this compromise was never acted upon, which is evinced by the fact that as agreed upon in the

compromise, mutation in the revenue entries was never carried out.

x) In 1997, however, a mutation did occur in the revenue records. This was carried out in favour of the appellants.

xi) Ramesh Chand left for his heavenly abode in 2002.

3. This factual background set the stage for the commencement of the third round of legal proceedings, out of which this civil appeal has arisen.

4. As late as on 25th February, 2003, Dr. Karam Chand (since deceased) along with his son[8] instituted a suit[9] against the appellants, their mother (the first defendant) (since deceased), the other heirs of Dr. Karam Chand, and the heirs of Ramesh Chand seeking, *inter alia*, the following relief:

> "A. That the sale deed dated 16.06.1992 executed by Shri Ramesh Chand favoring Smt. Meena Kumari etc. at Rs.80,000/- whose registry has been done on date 17.06.1992 in Book No.1 Section 440 at Page No.347/360 at Serial No.4215 and dated 29.06.1992 executed by Shri Ramesh Chand favoring Smt. Meena Kumari etc. at Rs.80,000/- the registry of which has been done in Book No.1 at Section 3317/3485 at Page No.350/408 at Serial No.5179 on date 30.06.1992 and whose details have been given at the end of the plaint and which are in respect of House No.49B, Nai Mandi, Muzaffarnagar, should be cancelled and possession be given to Plaintiff No.2 from the Defendant No.1 to 5 and the intimation of cancellation of the sale deeds be sent to the office of Sub-Registrar, Registry, Muzaffarnagar. In case the Hon'ble Court considers that the relief cannot be granted only in favour of the Plaintiff No.2 then the relief may be granted in favour of the Plaintiff No.2 and Defendant No.8 and 9.
>
> B. That the Defendants should be restrained by way of injunction order that the property built in A B C D as shown in map plaint in which on the ground floor Defendant No. 6 and 7 are in possession over some portion should not execute the sale deed in favour of Defendant No.1 to 5 or in favour of any other person or in any other

[8] plaintiffs, hereafter
[9] Original Suit No. 117/2003, referred to as the "subject suit" hereafter

manner should not put the Defendant No.1 to 5 or any other person into the possession over the property of occupancy by oneself or on any other portion.

C. That the total cost of the suit be directed to be paid by the defendants to the Plaintiff No. 2.

D. That any other or further order which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case may be passed in favour of the Plaintiff No.2 and against the Defendants."

5. The plaintiffs had applied for amendment of the plaint by filing an application under Order 6 Rule 17, CPC. They intended to insert paragraph 13A, after paragraph 13, reading as follows:

> "13A: - That the suit is based on title and the suit has been filed for recovery of possession based on title and the ground in the plaint is that through the two sale deeds dated 16.06.1992 and 29.06.1992 which are executed by Ramesh Chand Garg in favour of Defendant No. 1 to 5 no title has been transferred to Defendant No. 1 to 5 or any one of them. Ramesh Chand Garg had no title in the said property to which those two sale deeds relate. Plaintiff by way of abundant precaution also seeks the relief of cancellation of sale deeds in the suit but which is not required under the law. Dr. Karam Chand Garg is not a party in both the sale deeds and Ramesh Chand Garg had no title in the property."

6. The order passed on such prayer for amendment by the trial court is reproduced hereunder:

> "From the proposed amendment in the Plaint the nature of the suit is not changed and nor any irreparable loss is to be caused to the Defendants at all. The condonation of delay may be compensated through the costs. Hence the amendment application is liable to be accepted with costs."

7. The amendment, though innocuous, was applied with a definite purpose in mind, which will unfold as the discussion goes ahead.

8. In the subject suit, a compromise was eventually arrived at between the plaintiffs and Ramesh Chand's legal heirs on 28th January, 2008. The latter accepted execution of the WILL by the common ancestor, thus, consequently accepting that they had no right or title in the suit

property. It was accepted that Ramesh Chand was merely in permissive possession and, thus, did not have the right to execute sale deeds *qua* the suit property in favour of the appellants.

VERDICTS OF THE TRIAL COURT, THE FIRST APPELLATE COURT AND THE HIGH COURT

9. On 25th January, 2015, the subject suit was dismissed by the trial court on the following grounds:

i) That the plaintiffs failed to prove execution of the WILL in view of Section 68 of the Indian Evidence Act, 1872[10] and Section 90A thereof as amended by the State of Uttar Pradesh. It was held that the presumption of valid execution of documents older than 30 (thirty) years would not be attracted to those documents which formed the basis of the subject suit. The plaintiffs' claim having arisen from the WILL, they failed to prove its execution inasmuch as only a certified copy of the WILL was produced before the trial court. Further, the plaint was found to be bereft of the date of the execution of the WILL, nor was there any description of the witnesses to the WILL or whether they were alive at the time.

ii) Reliance was placed on Section 41 of the Transfer of Property Act, 1882[11] to observe that ever since the death of the common ancestor, the plaintiffs had allowed Ramesh Chand to reside in

[10] Evidence Act, hereafter
[11] ToP Act, hereafter

the suit property, allowed his name to be mutated in the revenue records and collected rent from the shopkeepers, thus, effectively portraying Ramesh Chand as the owner. In such circumstances, the plaintiffs could not appear out of the blue as the actual owners so as to challenge the sale deeds by which the appellants derived title to the suit property.

iii) With respect to the contention that the sale deeds were barred by the doctrine of *lis pendens*, the trial court held that the doctrine excepted from its ambit suits that are collusive in nature, which the second suit was found to be. Furthermore, no objection had been taken by the plaintiffs during the pendency of the second suit with respect to the strangers taking possession.

iv) The amendment applied for by the plaintiffs, referred to above, was ostensibly made with the purpose of getting over the bar of limitation. If it were a suit seeking only recovery of possession, the prescribed period of limitation would be 12 (twelve) years, whereas for cancellation, it would be 3 (three) years. However, the trial court did not confine itself to what the plaintiffs averred in paragraph 13A (inserted by way of amendment) and looking at the nature of relief claimed, placed reliance on Article 59 of the Limitation Act, 1963[12] providing only a three-year limitation period for cancellation of documents. The subject suit was

[12] Limitation Act, hereafter

instituted only in 2003 *qua* sale deeds which had been executed 11 (eleven) years prior in 1992. Thus, the suit was held to be barred by limitation.

v) Additionally, it was held that the plaintiffs had been unable to prove their ownership of the suit property and, thus, were not entitled to the consequential reliefs sought for.

10. Aggrieved, the plaintiffs filed a first appeal before the District Judge[13]. During the pendency of this appeal, the second plaintiff had also filed an interlocutory application, again seeking an amendment. On this occasion, he sought to introduce in the plaint the relief of declaration with respect to the disputed sale deeds. Given the stand taken in paragraph 13A of the plaint that cancellation of the sale deeds had been prayed for only as and by way of abundant caution, a completely new relief of declaration that the sale deeds dated 16th June, 1992 and 29th June, 1992 do not affect the title of the plaintiffs to the suit property and are not binding on them was sought by the second plaintiff which effectively turned his said stand on its face. Surprisingly, this application was allowed by the first appellate court *vide* order dated 18th October, 2016. However, on an application made by the appellants under Article 227 of the Constitution, the High Court set aside the same *vide* its order dated 06th December, 2016.

[13] first appellate court, hereafter

11. The first appellate court thereafter, *vide* judgment dated 04th March, 2017, allowed the appeal and decreed the suit of the plaintiffs on the following grounds:

i) In the first suit, Ms. Leelawati relied upon the WILL which was not contested by Ramesh Chand, thus, proving the veracity of the WILL. Furthermore, the appellants being strangers to the family could not question the validity of the WILL, more so when none of the family members themselves had laid such a challenge.

ii) The appellants traced their interest in the suit property from Ramesh Chand, who himself had never claimed ownership of the suit property either on the basis of the WILL or a family settlement. Their case being that Ramesh Chand acquired ownership through the latter, the burden to prove the same rested on the appellants.

iii) Since Ramesh Chand was never the owner, the sale deeds executed by him in favour of the appellants were void and, thus, it could not affect the plaintiffs' right to the suit property, hence obviating the necessity to seek a declaration *qua* such sale deeds. Consequently, Article 59 of the 1963 Act would not apply, the deeds having been executed by a person who had no right to execute them, with the plaintiffs not being a party thereto.

iv) The sale deeds were held to be hit by the doctrine of *lis pendens*, having been executed during the pendency of the second suit. The trial court's finding of the second suit being collusive was set

aside on the ground that the compromise arrived at in the said suit benefitted only Ramesh Chand, and not the plaintiffs.

12. The second appeal carried by the appellants before the High Court resulted in the judgment and decree impugned in this civil appeal. It was held by the High Court as follows:

i) The sale deeds being void, having been hit by *lis pendens*, the plaintiffs were not obliged to seek the relief of cancellation. Further, it was Article 65 of the 1963 Act which would govern the suit proceedings and the relief of possession having been sought, the period of limitation prescribed therefor being 12 (twelve) years.

ii) The plaints of both the first and the second suits were examined. In the first suit, Ms. Leelawati claimed title to the suit property through the WILL, which suit was eventually compromised. In the second suit too, it was categorically averred that the WILL executed did not give any share in the suit property to Ramesh Chand. This suit too was decreed on compromise, with both parties admitting execution of the WILL. The execution of the WILL having, thus, been proved by admission of both the plaintiffs and the predecessor-in-interest of the appellants, there thus arose no need to prove the WILL in the present proceedings, the issue being barred by *res-judicata*.

iii) The subject suit was held to be instituted within limitation, Article 65 of the 1963 Act being applicable since the plaintiffs

sought possession not on the basis of the cancellation of void documents, but on the basis of title. Though there was a prayer seeking cancellation of the documents, the benefit of the outer limitation period of 12 (twelve) years for recovery of possession would still accrue in favour of the plaintiffs.

iv) The compromise decree in the first suit would not bind the plaintiffs since they were not parties to the suit. Hence, the subject suit being decreed by the first appellate court was confirmed.

ARGUMENTS

13. Mr. Gulati, learned senior counsel on behalf of the appellants, assailed the impugned judgment on the following grounds:

(i) First, though the plaintiffs' claim to title rested entirely on the WILL, the plaint was woefully bereft of pertinent particulars with respect to execution of the document, such as the date of its execution, who were the attesting witnesses and whether the WILL was registered or not. Furthermore, the original of the WILL had not been produced before any forum in the present proceedings, and only a certified copy of the WILL was produced, that too 5 (five) years after the subject suit was instituted. There was no pleading in the plaint that the original WILL had been misplaced or lost. Thus, the courts below could not have accepted the WILL without the plaintiffs first having proved the loss of the original.

(ii) Secondly, though the plaint originally contained a prayer for cancellation of the sale deeds, the same was later given up on the

premise that it was wholly unnecessary and had only been made by way of abundant caution. Once such prayer stood removed, the only prayer remaining in the suit was that of seeking possession. However, where there lay a cloud over the title, such a suit for bare relief of possession could not lie and succeed.

(iii) Thirdly, the first and the second suits, which were decreed by way of compromise, were evidently collusive suits and, thus, constituted an exception to the doctrine of *lis pendens*. Further, the validity of the execution of the WILL was not an issue that was determined in either of the two suits, so as to constitute *res judicata* in the present proceedings. Even in the subject suit, Ramesh Chand's daughter, i.e., the seventh defendant had admitted in her evidence that she was paid money by the plaintiffs to settle the subject suit, though she was also a witness to both the sale deeds executed by her father.

(iv) Fourthly, the compromise in the second suit was recorded only on 13th October, 1992, by which time Ramesh Chand had already executed the two sale deeds. Having sold his share in the subject property anterior to the compromise, Ramesh Chand no longer had any *locus* to enter into the said compromise, having transferred the entirety of his rights, title and interest in the suit property to the appellants. Reliance was placed on Section 18 of the Evidence Act to urge that an admission by a person would be binding only if the person still had an interest in the matter at the time the admission was made.

(v) Fifthly, the interim order of injunction dated 05th June, 1992 in the second suit was never communicated to the appellants. Though the plaint contains a bare averment with respect to such order being within the knowledge of the appellants, no details of the same were ever given. Furthermore, this interim order was not produced before the trial court and was only produced for the first time at the first appellate stage.

(vi) Sixthly, Section 41 of the ToP Act would apply to the present proceedings, as rightly held by the trial court, since the plaintiffs had allowed Ramesh Chand to act as the owner for all intents and purposes to the world at large. This is evinced by the factum of Ramesh Chand's name being mutated in the municipal records in respect of the eastern portion of the suit property all the way back in 1956, and that he was allowed to collect rent from the tenants in possession of part of the suit property.

(vii) Seventhly, the second plaintiff in his cross-examination admitted that within 10 (ten) days of purchase of the suit property, in 1992 itself, the appellants had taken possession of the suit property. Despite the cause of action having arisen in 1992, the plaintiffs chose to institute the suit 11 (eleven) years later in 2003. The limitation period prescribed for suits seeking cancellation of documents being 3 (three) years, as laid down in Article 59 of the 1963 Act, the plaintiffs' suit was evidently barred by limitation.

14. Mr. Gulati, resting on the aforesaid contentions, appealed that it was a fit and proper case where the impugned second appellate judgment and decree ought to be reversed and that of the trial court restored.

15. Mr. Kumar, learned counsel for the plaintiffs, assiduously argued in favour of upholding of the impugned second appellate judgment and decree, asserting that it was in accordance with law and did not deserve interference, on the following grounds:

(a) First, the WILL of Dr. Babu Ram Garg gave all the three sons shares of the testator's properties, leaving none behind. As per the document, Ramesh Chand only inherited the pharmacy business and Rs 5000. Thus, Ramesh Chand (the vendor of the appellants) not having been bequeathed any interest in the suit property by his father, he could not have transferred any portion thereof to the appellants. The plaintiffs had duly produced a certified copy of the registered WILL on 26th February, 2003 and a certified copy was also exhibited on 06th February, 2008. At no point in the proceedings did the appellants raise any additional issue with respect to the WILL or non-production of the original thereof. Thus, the issue could not be agitated for the first time before this Court.

(b) Secondly, the WILL stood admitted by all heirs of Dr. Babu Ram Garg with none of the legal heirs contesting the same. In view thereof, the appellants could not have raised a challenge to the WILL when the party through whom they traced their title, i.e., Ramesh Chand, never contested the WILL. It was argued that

any defence that could not have been taken by the person from whom a transferee derives his title could not be taken by such transferee.

(c) Thirdly, the sale deeds executed by Ramesh Chand in favour of the appellants were executed in violation of the ad-interim stay order dated 05th June, 1992 passed in the second suit and hence, were void.

(d) Fourthly, the plaint duly prayed for cancellation of sale deeds, by way of abundant caution. The issue was duly contested by the appellants and, thus, they cannot today claim that such prayer was never made.

(e) Fifthly, the appellants would not get the benefit of Section 41 of the ToP Act in the absence of any pleadings to such effect. It was argued that there is no whisper of the alleged ostensible ownership of Ramesh Chand in either the written statement, the grounds of the second appeal or the present special leave petition. The appellants could not be held entitled to the benefit of such provision since no case was specifically made out for the same.

(f) Sixthly, without prejudice to the submission that no challenge could have been laid to such compromise without filing an application under Order XXIII Rule 3, CPC, it was contended that no issue was framed in the subject suit/proceedings with respect to the compromise decrees passed in the earlier suits being collusive. Further, no questions or suggestions in this

regard were put to the plaintiffs' witnesses. The compromise decree in the second suit was, thus, valid and binding on the appellants.

(g) Lastly, it was submitted that the main relief sought in the subject suit was recovery of possession, the limitation period for which is 12 (twelve) years, as prescribed in Article 65 of the Limitation Act. The dispossession of the plaintiffs having occurred in 1992, institution of the subject suit in 2003 was well within the period of limitation. The relief of cancellation of void sale deeds was merely an ancillary relief, and would not disentitle the plaintiffs to the primary relief for which the limitation period is 12 (twelve) years.

ANALYSIS AND REASONS

16. The present proceedings involve determination of multiple legal issues of some complexity. We would endeavour to deal with them sequentially.

I. WHETHER THE SUIT WAS BARRED BY LIMITATION

17. A coordinate Bench of this Court, in its decision of ***Khatri Hotels (P) Ltd. v. Union of India***[14], examined the position under Article 120 of the Limitation Act, 1908 vis-à-vis Article 58 of the Limitation Act to observe that the right to sue would accrue when there was a clear and unequivocal threat of infringement of the plaintiff's right. However, while the former provision simply stated that the period of limitation

[14] (2011) 9 SCC 126

commenced when the right to sue accrues, in a marked linguistic departure, the latter provision stated that the limitation would commence when the right to sue "first" accrued. Having observed so, this Court held that:

> "30. While enacting Article 58 of the 1963 Act, the legislature has designedly made a departure from the language of Article 120 of the 1908 Act. The word 'first' has been used between the words 'sue' and 'accrued'. This 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. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued."
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> (emphasis supplied)

18. ***Khatri Hotels (P) Ltd.*** (supra) noticed the decision of a three-Judge Bench in ***Rukhmabai v. Lala Laxminarayan***[15] wherein the legal position was stated thus:

> "34. The legal position may be briefly stated thus : The right to sue under Article 120 of the Limitation Act accrues when the defendant has clearly and unequivocally threatened to infringe the right asserted by the plaintiff in the suit. Every threat by a party to such a right, however ineffective and innocuous it may be, cannot be considered to be a clear and unequivocal threat so as to compel him to file a suit. Whether a particular threat gives rise to a compulsory cause of action depends upon the question whether that threat effectively invades or jeopardizes the said right."
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> (emphasis supplied)

19. ***Khatri Hotels Pvt. Ltd.*** (supra) was noticed and applied by a bench of three-Judges in ***Shakti Bhog Food Industries Ltd. v. Central Bank of India***[16], although in the context of Order VII Rule 11, CPC. It was held thus:

> "17. The expression used in Article 113 of the 1963 Act is 'when the right to sue accrues', which is markedly distinct from the expression used in other Articles in First Division of the Schedule dealing with

[15] AIR 1960 SC 335
[16] (2020) 17 SCC 260

> suits, which unambiguously refer to the happening of a specified event. Whereas, Article 113 being a residuary clause and which has been invoked by all the three courts in this case, does not specify happening of particular event as such, but merely refers to the accrual of cause of action on the basis of which the right to sue would accrue.
>
> 18. Concededly, the expression used in Article 113 is distinct from the expressions used in other Articles in the First Division dealing with suits such as Article 58 (when the right to sue 'first' accrues), Article 59 (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) and Article 104 (when the plaintiff is 'first' refused the enjoyment of the right). The view taken by the trial court, which commended to the first appellate court and the High Court in the second appeal, would inevitably entail in reading the expression in Article 113 as — when the right to sue (first) accrues. This would be rewriting of that provision and doing violence to the legislative intent. We must assume that Parliament was conscious of the distinction between the provisions referred to above and had advisedly used generic expression 'when the right to sue accrues' in Article 113 of the 1963 Act. Inasmuch as, it would also cover cases falling under Section 22 of the 1963 Act, to wit, continuing breaches and torts."

20. ***Shakti Bhog Food Industries Ltd.*** (supra) also noticed the earlier three-Judge bench decision in ***Union of India v. West Coast Paper Mills Ltd.***[17]. There, the distinction between Article 58 and Article 113 of the Limitation Act was noticed and delineated as under:

> "21. A distinction furthermore, which is required to be noticed is that whereas in terms of Article 58 the period of three years is to be counted from the date when 'the right to sue first accrues', in terms of Article 113 thereof, the period of limitation would be counted from the date 'when the right to sue accrues'. The distinction between Article 58 and Article 113 is, thus, apparent inasmuch as the right to sue may accrue to a suitor in a given case at different points of time and, thus, whereas in terms of Article 58 the period of limitation would be reckoned from the date on which the cause of action arose first, in the latter the period of limitation would be differently computed depending upon the last day when the cause of action therefor arose."

21. One other three-Judge bench decision of this Court is ***Madhukar Vishwanath v. Madhao***[18], wherein the question arising for decision

[17] (2004) 2 SCC 247
[18] (1999) 9 SCC 446

was whether a suit filed by a minor, 7 (seven) years after having attained majority, seeking a declaration that the alienation made by his guardian was barred by limitation. While the appellant argued that possession being sought, Article 65 of the 1963 Act would govern the question of limitation, the respondents argued that the suit being one seeking declaratory relief, would be governed by Article 60 of the 1963 Act. Upholding the latter argument, this Court held that possession only being a consequential relief, Article 65 would not apply.

22. This principle was further relied upon and affirmed by this Court in ***L.C. Hanumanthappa v. H.B. Shivakumar***[19].

23. Further, in ***Rajpal Singh v. Saroj***[20], this Court held that where a composite suit had been filed for cancellation of the sale deed and of possession, the limitation period would have to be adjudged from the primary relief of cancellation which is 3 (three) years, and not the ancillary relief of possession which is 12 (twelve) years. In holding so, this Court held that:

> "14. The submission on behalf of the original plaintiff (now represented through her heirs) that the prayer in the suit was also for recovery of the possession and therefore the said suit was filed within the period of twelve years and therefore the suit has been filed within the period of limitation, cannot be accepted. Relief for possession is a consequential prayer and the substantive prayer was of cancellation of the sale deed dated 19-4-1996 and therefore, the limitation period is required to be considered with respect to the substantive relief claimed and not the consequential relief. When a composite suit is filed for cancellation of the sale deed as well as for recovery of the possession, the limitation period is required to be considered with respect to the substantive relief of cancellation of the sale deed, which would be three years from the date of the knowledge of the sale deed sought to be cancelled. Therefore, the suit, which was filed by the original plaintiff for cancellation of the sale deed, can be said to be substantive therefore the same was clearly barred by

[19] (2016) 1 SCC 332
[20] (2022) 15 SCC 260

limitation. Hence, the learned trial court ought to have dismissed the suit on the ground that the suit was barred by limitation. …"

(emphasis supplied)

24. These precedents would certainly have a bearing on the question of limitation, which we are tasked to decide.

25. Heavy reliance has been placed by the plaintiffs on a 3-Judge Bench decision of this Court in ***Sopanrao v. Syed Mehmood***[21] wherein, while adjudicating a suit for possession and declaration of title, this Court held that:

> "9.***The appellants contend that the limitation for the suit is three years as the suit is one for declaration. We are of the view that this contention has to be rejected. We have culled out the main prayers made in the suit hereinabove which clearly indicate that it is a suit not only for declaration but the plaintiffs also prayed for possession of the suit land. The limitation for filing a suit for possession on the basis of title is 12 years and, therefore, the suit is within limitation. Merely because one of the reliefs sought is of declaration that will not mean that the outer limitation of 12 years is lost. Reliance placed by the learned counsel for the appellants on the judgment of this Court in *L.C. Hanumanthappa* v. *H.B. Shivakumar* [(2016) 1 SCC 332 : (2016) 1 SCC (Civ) 310] is wholly misplaced. That judgment has no applicability since that case was admittedly only a suit for declaration and not a suit for both declaration and possession. In a suit filed for possession based on title the plaintiff is bound to prove his title and pray for a declaration that he is the owner of the suit land because his suit on the basis of title cannot succeed unless he is held to have some title over the land. However, the main relief is of possession and, therefore, the suit will be governed by Article 65 of the Limitation Act, 1963.***"
>
> (emphasis supplied)

26. Mr. Kumar has been vociferous in his argument that the aforesaid precedent binds us.

27. However, what we find from the decision in ***Sopanrao*** (supra) is that the larger bench did not have the benefit of taking into consideration number of precedents in the field some of which are noticed above.

[21] (2019) 7 SCC 76

28. Bare reading of the aforesaid precedents reveals a cleavage of opinion. While all the precedents seem to be *ad idem* on the point of interpretation of Articles 58, 59 and 113 under FIRST DIVISION – SUITS forming part of the SCHEDULE to the Limitation Act, the decision in ***Sopanrao*** (supra) does seem to strike a discordant note on such point.

29. Taking into consideration all the precedents, we may summarise our views on the question under consideration.

30. Insertion by the Parliament of the word *"first"* under the column *'Time from which period begins to run'* in Article 58 is not without a purpose. Such word, which was not there in the Limitation Act, 1908, has been designedly used in Article 58 to signify that a suit to obtain declaration (other than those referred to in Articles 56 and 57) has to be instituted within three years of *'when the right to sue first accrues'*. In simpler terms, if cause of action to sue means accrual of the right for an actionable claim, it is the moment from which such right *first* accrues that the clock of limitation would start ticking. Thus, even though cause of action for instituting a suit might arise on varied occasions and/or at different times, what is material and assumes relevance for computing the period of limitation under Article 58 is the date when the right to sue *first* accrues to the aggrieved suitor. Though *dominus litus*, a suitor cannot pick and choose a time for approaching court. The period of limitation in terms of Article 58 being 3 (three) years, the prescribed period has to be counted from that date of the right to sue *first* accruing and the suit, if not instituted within 3 (three) years therefrom, would become barred by time.

31. Similarly, under the column *'Time from which period begins to run'* in Article 59 providing for a three-year limitation period for cancellation of an instrument, the ordainment is that the period will run *'when the facts entitling the plaintiff to have the instrument … cancelled or set aside … first become known to him'*. Any suit seeking cancellation of a particular instrument as void or voidable would be governed by Article 59 and, therefore, has to be instituted within 3 (three) years from date the suitor could be said to have *first* derived knowledge of the fact of such an instrument (which, according to him, is void or voidable) coming into existence. The word *"first"* in Article 59 would ordinarily have the same connotation as in Article 58.

32. In the present case, the appellants had been put in possession of the suit property in furtherance of the sale deeds executed by and between Ramesh Chand and the former after the same were registered. Hence, a civil suit seeking declaration of status or right simplicitor would not have sufficed for the plaintiffs since admittedly, they were required to seek further relief. A composite suit seeking cancellation, recovery of possession and injunction is what was required to be instituted, as distinguished from a suit seeking only recovery of possession. There is an admission of the plaintiffs on record that the appellants had moved into the suit property soon after execution of the sale deeds. Thus, the facts and circumstances were such that in addition to seeking cancellation of the sale deeds, since registered, the plaintiffs had to and did seek recovery of possession. Cancellation, we are inclined to

hold, was the primary relief in the circumstances with recovery of possession being the ancillary relief.

33. Turning to the facts, the sale deeds executed by and between Ramesh Chand and the appellants were not sham and inoperative such that the plaintiffs could, at their option, not seek cancellation thereof. Execution of the sale deeds was followed by registration as required by law. Whether or not Ramesh Chand had any subsisting right to transfer the suit property or whether or not the plaintiffs did trace their title through any valid deed/document could be examined by the trial court only if the civil suit had been instituted by the plaintiffs within the period of limitation, as prescribed. In a case of the present nature, it was not sufficient for the plaintiffs to claim a decree for recovery of possession only. They had to otherwise establish their right to the suit property.

34. The civil suit was instituted with a prayer for cancellation of the registered sale deeds, which the plaintiffs conveniently sought to give up to project that the suit was only for recovery of possession and, thus, duly instituted in terms of Article 65, i.e., within 12 (twelve) years *'when the possession of the defendant becomes adverse to the plaintiff'*. After the civil suit failed on the ground of limitation, the relief of declaration was belatedly sought to be inserted in the plaint in course of the first appeal. Although the plaintiffs sought to contend that the prayer for cancellation as well as the proposed insertion of the prayer for a declaration was by way of an abundant caution, we have no hesitation in rejecting such a contention as an after-thought.

35. It is not in dispute that the plaintiffs did have knowledge - constructive as well as actual - during the pendency of the second suit or soon thereafter of transfer of the suit property in favour of the appellants effected by Ramesh Chand by way of execution of the sale deeds which were subsequently registered as required by Section 54 of the ToP Act. Once the appellants started residing in the suit property, what crystallised was the invasion of the plaintiffs' rights. Their right to the suit property, if any, was put to clear jeopardy. With the execution of the sale deeds, subsequently registered, this was the moment when the right to sue first accrued to the plaintiffs. In fact, according to the plaintiffs, Ramesh Chand was proposing to dispose of the suit property in favour of third parties and such apprehension of an intended transfer was precisely the cause of action that was pleaded for institution of the second suit. In any event, whatever be the relevant date, i.e., execution of the sale deeds by which Ramesh Chand conveyed the suit property to the appellants or the date of taking actual possession of the suit property by the appellants from Ramesh Chand a few days after execution of such deeds, it is from such date of knowledge in June, 1992 that the said transfer effectively did invade or jeopardize the plaintiffs' interest in respect of the suit property. Contention of Mr. Gulati, therefore, has sufficient force that the suit had to be instituted within 3 (three) years, since the title in respect of the suit property had passed on to the appellants. He is also right in submitting that the conduct of the plaintiffs does throw light on how they juggled to overcome the bar of limitation by seeking a decree for cancellation of

the sale deeds, which they sought to abandon midway by applying for amendment; thereafter, again they made an attempt for insertion of the prayer for declaration, also by way of an amendment at the appellate stage, which did not ultimately fructify.

36. The civil suit of the plaintiffs having been instituted in 2003, it was hopelessly barred by limitation and Section 3 of the Limitation Act essentially entails its dismissal. The trial court, therefore, was right in dismissing the suit, *inter alia*, on the ground of limitation.

37. The civil suit of the plaintiffs being barred by limitation, normally, we would not be required to delve into the other questions urged by the parties.

38. However, in view of the fact that we have expressed a view in accord with other precedents in the field but not necessarily a view which is wholly in consonance with the larger bench decision in ***Sopanrao*** (supra) and Mr. Kumar having urged that we are bound thereby, freeing ourselves of the finding that the civil suit was time-barred, we wish to deal with the other questions arising for decision as well.

39. However, before parting with our discussion on this question, we also wish to observe that there is one observation in the same relied on paragraph of the decision in ***Sopanrao*** (supra) which could cost the plaintiffs dearly. We propose to refer to the same at a later part of this judgment, while proceeding to decide the other questions arising for decision.

II. WHETHER THE SALE DEEDS WERE VOID DOCUMENTS

40. The plaintiffs contended that Ramesh Chand had no right in the property, and being devoid of any ownership rights, was in no position to transfer title of the same to the appellants. Reliance has been placed on the legal maxim *nemo dat quod non habet*, i.e., no one can transfer a better title than what he himself possesses. Furthermore, the sale deeds having been executed when an ad-interim injunction order was in operation, the bar in Section 52 of the ToP Act would render the sale deeds *void ab initio*. On the other hand, the appellants have relied on Section 41 of the ToP Act to advance the submission that Ramesh Chand having been portrayed to the world at large as owner, the plaintiffs could not emerge from out of the woodwork to claim a secret title.

41. The High Court's finding that the sale deeds would be rendered void solely on account of the operation of an injunction order has necessarily to be set aside. It is settled law that Section 52 of the ToP Act does not *ipso facto* render a sale transaction as inoperative, it merely subjects it to the outcome of the pending proceedings. This Court in ***G.T. Girish v. Y. Subba Raju***[22] held that:

> "137. A transfer which is made lis pendens it is settled law, is not a void document. It does create rights as between the parties to the sale. The right of the party to the suit who conveys his right by a sale is extinguished. All that Section 52 of the Transfer Property Act provides is that the transfer which is made during the pendency of the proceeding is subjected to the final result of the litigation."

[22] (2022) 12 SCC 321

42. Furthermore, the High Court failed to scrutinise the nature of the second suit in which the alleged ad-interim injunction order was passed. A perusal of the same reveals that the second suit was filed by Dr. Karam Chand on 15th June, 1992 and was compromised 4 (four) months later on 12th October, 1992 with one of the terms of compromise being that the revenue records would be mutated in the name of Dr. Karam Chand, which mutation was never carried out. Suspicion clouds the second suit, more so, when it is noted that though the first sale deed was executed by Ramesh Chand on the very next day the order of injunction was passed, i.e., on 16th June, 1992 and the second deed executed on 29th June, 1992, whereafter the appellants were put in possession, neither was the ad-interim injunction order ever produced before the trial court in the present proceedings (having seen the light of day in the first appellate court for the first time) nor was the issue brought before the trial court for its examination and decision. Dr. Karam Chand and Ramesh Chand conveniently had the civil suit disposed of on the basis of compromise, when Ramesh Chand did not have any subsisting right in the suit property having sold it to the appellants. The effect of the doctrine of *lis pendens*, which Section 52 of the ToP Act embodies, is not to annul all voluntary transfers effected by a party to the suit but only to render it subservient to the rights of the parties thereto under the decree or order that the court may make in the suit. The transfer, subject to the result of the suit, could remain valid. In view of Dr. Karam Chand and Ramesh Chand conveniently entering into a compromise, collusion

between the plaintiffs and Ramesh Chand is writ large. There being no proof that the appellants had knowledge of this injunction order, the transaction could not have been declared *void ab initio.* In view of the facts and circumstances discussed above, we thus find this to be a case which falls within the exceptions laid down under Section 52 of the ToP Act, i.e., non-applicability of the provision to collusive suits.

43. We now proceed to advert to the second limb of the argument, i.e., the competence of Ramesh Chand to execute the sale deeds. In *arguendo*, even if it is accepted that Dr. Babu Ram Garg by the WILL did not bequeath any interest in the suit property to Ramesh Chand, it is an admitted fact that he was allowed to reside in the property, and that he was allowed to continue with collection of rent from shops therein. Most importantly, in 1956, the name of Ramesh Chand was mutated in the revenue records in respect of the suit property and this record remained unchanged and unchallenged till 1997 when the appellants applied for and obtained mutation of revenue records in their favour. In view thereof, it would have been well-nigh impossible for any vendee to conclude that someone other than Ramesh Chand was the owner of the suit property. Thus, the appellants would have to be held to be *bona fide* purchaser for value and, thus, entitled to the benefit of Section 41 of the ToP Act.

44. Mr. Kumar has joined issue by citing absence of requisite pleadings for attracting Section 41 of the ToP Act. Even though Section 41 might not have been expressly referred to in their written statement by the appellants, what was pleaded in paragraph 35 thereof is considered

sufficient for the present purpose. The appellants have taken the same plea in ground (cc) of the appeal. Contention of Mr. Kumar, to the contrary, is thus not acceptable.

45. Disagreeing with the High Court, we answer this question in favour of the appellants and against the plaintiffs.

III. WHETHER THE WILL STOOD ADMITTED IN THE PREVIOUS SUITS AND WAS NO LONGER REQUIRED TO BE PROVED

46. An intriguing argument was presented by Mr. Kumar for the plaintiffs, asserting that the execution of the WILL was not contested by the predecessor-in-interest of the appellants in the initial two suits, and therefore, the WILL is deemed to be admitted and they are bound by such admission of their predecessor; and, also, because *res judicata* applies. Reliance was placed upon Section 58 of the Evidence Act in support of the argument that facts admitted, which in the present case is the execution of the WILL, do not require further proof. As a result, there was no obligation to prove the WILL in accordance with Section 68 of the Evidence Act, which mandates that at least one attesting witness be called for proving the WILL.

47. At the first blush, this argument may appear to be rational but we find it difficult to agree with it.

48. The principle that a will must be proven in accordance with Section 68 of the Evidence Act, is firmly established in law. In ***Ramesh Verma v. Lajesh Saxena***[23], this Court held that requirement of proof of a will in accordance with Section 68 is not done away with, even if the will is

[23] (2017) 1 SCC 257

not disputed by the opposite party. For ease of understanding, we quote the relevant passage hereunder:

> "13. A will like any other document is to be proved in terms of the provisions of Section 68 of the Evidence Act and the Succession Act, 1925. The propounder of the will is called upon to show by satisfactory evidence that the will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the disposition and put his signature to the document on his own free will and the document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. This is the mandate of Section 68 of the Evidence Act and the position remains the same even in a case where the opposite party does not specifically deny the execution of the document in the written statement."
>
> (emphasis supplied)

49. Furthermore, it is worth mentioning that the plaint in the first suit lacked essential details regarding the WILL; the original WILL was never filed before the trial court; the WILL only came to light in 2003; the plaint in the subject suit did not clarify the WILL's current status — whether it was lost or not. In light of such vague descriptions, it is difficult to accept that there was deemed admission due to non-denial in the first place. Nonetheless, for the sake of argument, even if these flaws were absent and yet the defendant did not deny the execution of WILL, the obligation to prove a WILL as specified in Section 68 would remain unaltered (as discussed above).

50. Next, it was submitted by Mr. Gulati, and rightly so, that the benefit of Section 90 of the Evidence Act of presumption as to documents thirty years old could not have been given to the plaintiffs. As applicable in the State of Uttar Pradesh, Section 90A with the State amendment is reproduced below:

> "90-A. (1) Where any registered document or a duly certified copy thereof or any certified copy of a document which is part of the record of a Court of Justice, is produced from any custody which the court in the particular case considers proper, the court may presume that the original was executed by the persons by whom it purports to have been executed.
>
> (2) This presumption shall not be made in respect of any document which is the basis of a suit or of a defence or is relied upon in the plaint or written statement."
> The explanation to sub-Section (1) of Section 90 will also apply to this Section."

51. Section 90A(1) provides that where a registered document or its certified copy being a part of the record of court is produced from the custody of court, the court may presume that the original was executed by the person by whom it is purported to have been executed. Section 90A(2), however, makes it clear that the presumption in Section 90A(1) will not be made if the said document forms the basis of the suit. The plaintiffs in the subject suit traced their title to the WILL. The WILL, therefore, formed the basis of the subject suit and hence no presumption under Section 90A(1) can be raised to the benefit of the plaintiffs.

52. Significantly, the statement made in paragraph 2 of the plaint is that *"Dr. Babu Ram Garg passed away in 1958 and he had executed a will and also got it registered which is well into the knowledge of the parties"*. In their written statement, the appellants denied existence of the WILL by pleading that Dr. Babu Ram Garg never executed any will. Insofar as the appellants are concerned, there was no admission. In fact, the plaintiffs were specifically put on notice by the appellants that they were disputing the WILL. The burden was on the plaintiffs to prove the WILL. The list of documents sought to be relied on by the plaintiffs

included certified copy of the registered Will of Dr. Babu Ram Singh but there was no pleading in the plaint as to whether the WILL was lost or misplaced. A certified copy was only sought to be produced.

53. We may at this stage notice a few precedents on the point of a party adducing secondary evidence in the nature of certified copy.

54. In ***Benga Behera v. Braja Kishore Nanda***[24], a coordinate Bench of this Court had the occasion to observe thus:

> "31. A document upon which a title is based is required to be proved by primary evidence, and secondary evidence may be given under Section 65(*c*) of the Evidence Act. The said clause of Section 65 provides as under:
> '65. (*c*) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;'
>
> Loss of the original, therefore, was required to be proved.
>
> 32. In a case of this nature, it was obligatory on the part of the first respondent to establish the loss of the original will beyond all reasonable doubt. His testimony in that behalf remained uncorroborated."

55. Yet again, in ***Jagmail Singh v. Karamjit Singh***[25]***,*** the law was reiterated in the following words:

> "14. It is trite that under the Evidence Act, 1872 facts have to be established by primary evidence and secondary evidence is only an exception to the rule for which foundational facts have to be established to account for the existence of the primary evidence. In *H. Siddiqui* v. *A. Ramalingam*, (2011) 4 SCC 240, this Court reiterated that where original documents are not produced without a plausible reason and factual foundation for laying secondary evidence not established it is not permissible for the court to allow a party to adduce secondary evidence."

56. We do not find from the materials on record including the judgments of the trial court and the first appellate court as to whether any

[24] (2007) 9 SCC 728
[25] (2020) 5 SCC 178

evidence was led that the WILL of Dr. Babu Ram Garg was misplaced or lost or not otherwise available. In the absence of evidence being led, acceptable to the court, that the original WILL was misplaced or lost or otherwise not available, the precedents above referred would apply on all fours.

57. Interestingly, the first appellate court proceeded on the basis that the WILL was accepted by the parties to the first and the second suit and, therefore, *res judicata* applied without, however, realising that the appellants were not parties to any of those two suits and neither was there any occasion for them to be bound by any admission or acceptance of the WILL by their predecessor-in-interest nor did the appellants ever make any such admission.

58. In such view of the matter, the inevitable conclusion that we reach is that the plaintiffs' title to the suit property could not have been traced to the WILL of Dr. Babu Ram Garg.

59. This question too stands answered in favour of the appellants and against the plaintiffs.

IV. WHETHER THE FIRST APPELLATE COURT WAS RIGHT IN DECREEING THE SUIT WITHOUT THE PLAINTIFFS SEEKING RELIEF OF DECLARATION/CANCELLATION?

60. The decree passed by the first appellate court reads as follows:

> "Civil Appeal is accepted. Judgment and order under question dated 25.02.2015 is set aside. Respondents are directed to vacate the possession of the property, possessed on the basis of disputed document dated 16.06.1992 and 29.06.1992 within 30 days and hand over the possession to the plaintiff/ appellant otherwise appellant/plaintiff will be entitled to take possession in accordance with law.
>
> So far as the question of grant of relief of injunction against Defendant No. 6 and 7 is concerned; Defendant No.6 and 7 has the possession on the ground floor of the disputed house being A. B. C.

> D. with the permission of the plaintiff and his father, therefore, plaintiff / appellant will be entitled to dispossess the Defendant No. 6 & 7 by filing a suit of eviction against the Defendant No. 6 & 7 in accordance with law and the plaintiff / appellant will be entitled to get the possession of the disputed property."

61. It is, therefore, seen that the first appellate court without passing any decree in favour of the plaintiffs (i) declaring their right, title and interest in respect of the suit property; (ii) declaring that the sale deeds dated 16th June, 1992 and 29th June, 1992 did not affect their title and/or that they were not bound thereby and (iii) cancelling the registered sale deeds dated 16th June, 1992 and 29th June, 1992, granted relief by issuing a decree for recovery of possession.

62. This Court in ***Anathula Sudhakar v. P. Buchi Reddy***[26] had the occasion to hold that where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from the defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction; however, where the title of the plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction (emphasis supplied).

63. In ***Sopanrao*** (supra) too, the three-Judge bench reiterated the position by holding that in a suit filed for possession based on title the plaintiff is bound to prove his title and pray for a declaration that he is the owner of the suit land because his suit on the basis of title cannot

[26] (2008) 4 SCC 594

succeed unless he is held to have some title over the land (emphasis supplied).

64. We have noticed hereinbefore that the sale deeds executed by Ramesh Chand in favour of the appellants were registered. On the date the second suit was compromised by Ramesh Chand with Dr. Karam Chand, Ramesh Chand had lost title to the suit property. Legally speaking, he could not have entered into any compromise with Dr. Karam Chand and thereby confer on him any right, title or interest in respect of the suit property. Although, transfer of property by the sale deeds was well within the knowledge of the plaintiffs, neither did they bring the fact of such sale to the notice of the trial court, seized of the second suit, nor could the appellants be shown to have knowledge of the pending suit while the sale transaction was effected. In such circumstances, any compromise arrived at when the first and the second suits were pending by and between the family members of the plaintiffs in the absence of the appellants as parties to such proceedings, such compromise decrees could not have had the effect of binding the appellants. Thus, the appellants having legitimately objected to validity of the WILL in their written statement, law required the plaintiffs to prove such WILL in accordance with law. For the reasons mentioned in Section III above, we have held that the WILL was not proved.

65. That apart, the plaintiffs having given up the relief of cancellation before the trial court and their attempt to insert in the plaint the prayer for relief of declaration that the sale deeds dated 16th June, 1992 and

29th June, 1992 do not affect their title and are not binding on them having been spurned by the High Court in its revisional jurisdiction, which has since attained finality, we hold that on the face of the strong opposition raised by the appellants the first appellate court acted illegally in the exercise of its jurisdiction in granting relief to the plaintiffs by passing a decree for recovery of possession without there being any decree for declaration of rights/cancellation of deeds. At the stage of exercise of jurisdiction by the appellate court under Section 96 of the CPC, the plaint in the form it was there before such court was incurably defective and no relief could have been granted to the plaintiffs.

66. The High Court, in the exercise of its second appellate jurisdiction, did not fare better. In fact, application of judicial mind to the substantial questions of law arising for decision on the second appeal is conspicuous by its absence.

67. For the reasons aforesaid, this question is also answered in favour of the appellants and against the plaintiffs.

CONCLUSION

68. Having regard to the foregoing discussions, we have no hesitation to hold that the subject suit of the plaintiffs could not have succeeded. The trial court, in our opinion, was right in dismissing the suit.

69. The impugned second appellate judgment and decree of the High Court and the first appellate judgment and decree of the first appellate court

are both set aside and that of the trial court is restored, with the result that the subject suit shall stand dismissed.

70. The civil appeal, thus, stands allowed. Parties shall, however, bear their own costs.

.....J.
(DIPANKAR DATTA)

.....J.
(PRASHANT KUMAR MISHRA)

NEW DELHI;
APRIL 23, 2025.