2025 INSC 553

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5470 OF 2025
(Arising from SLP (C) No. 3056 OF 2016)

HUSSAIN AHMED CHOUDHURY & ORS. ...APPELLANTS

Versus

HABIBUR RAHMAN (DEAD) THROUGH LRs & ORS. ...RESPONDENTS

J U D G M E N T

J.B. PARDIWALA, J.

1. Leave granted.

2. This appeal arises from the common judgment and order passed by the High Court of Guwahati dated 09.10.2015 in Regular Second Appeal No. 3 of 2007 and Regular Second Appeal No. 11 of 2007 respectively by which the High Court allowed both the Second Appeals preferred by the respondents herein (original defendants) and thereby set aside the judgment and decree passed by the Trial Court as affirmed by the First Appellate Court in favour of the appellants herein (original plaintiffs).

3. For the sake of convenience, the appellants herein shall be referred to as the original plaintiffs and the respondents herein shall be referred to as the original defendants.

A. FACTUAL MATRIX

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

i. A registered Gift Deed dated 26.04.1958 in respect of land admeasuring 08 bighas and 06 chatak (which includes the suit land admeasuring 04 bighas, 05 katha and 06 chatak), was executed by one Haji Abdul Aziz Choudhury (grandfather of the original plaintiff) in favour of Siraj Uddin Choudhury (original

plaintiff). The reason for the execution of the Gift Deed being that as Abdul Aziz's son had predeceased him, his grandson, Siraj Uddin, would not otherwise have been eligible to inherit his grandfather's property as per Muslim law.

ii. The appellants herein are the legal heirs of the original plaintiff.

iii. The grandfather of the original plaintiff passed away in 1971.

iv. On 05.05.1997, the respondent no. 1 allegedly purchased part of the suit land from the original defendant nos. 1 to 6 (brothers and sisters of the plaintiff's deceased father) who, according to the plaintiff, had no title or saleable rights over the suit property.

v. The Title Suit, bearing No. 88/1997 was filed by the plaintiff, seeking declaration, confirmation of possession and mandatory injunction over the suit land. The cause of action for the suit arose in 1997 when the defendants started threatening to dispossess the plaintiff from the suit property, and did succeed in forcibly dispossessing him on 08.05.1999, during the pendency of the suit.

vi. The plaint was accordingly amended on 28.08.1999, to seek recovery of possession as the plaintiff was dispossessed during pendency of the suit.

vii. The Trial Court framed the following issues for its consideration:

> *"Upon the pleadings of both the sides, the following issues were framed:*
> 1. *Is there any cause of action for the suit?*
> 2. *Is the suit bad for defect of necessary parties?*
> 3. *Whether late Haji Abdul Aziz Choudhury, grandfather of the plaintiff as well as predecessor of the defendants, gifted the suit land in favour of the plaintiff by executing registered Gift Deed No. 2656 dated 26.04.1958 and delivered possession?*
> 4. *Whether the plaintiff acquired right, title, interest and possession over the suit land on the basis of Gift Deed No. 2656?*
> 5. *Whether the defendants threatened the plaintiff to dispossess him, out of the possession of the suit land illegally?*
> 6. *Is the plaintiff entitled to a decree as prayed for?*
> 7. *To what other relief/reliefs, the parties are entitled to?*
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> *--xxx--*
>
> *Additional Issue:*
>
> *(1) Is the suit maintainable in law, as well as, on facts?"*

viii. The T.S. No. 88/1997 came to be allowed *vide* the judgment and decree dated 21.05.2001 in favour of the plaintiff, with all issues decided in his favour. The Civil Judge, Cachar, Silchar was pleased to hold as follows:

> *"1. That the Gift Deed was validly executed by the plaintiff's grandfather in his favour, as corroborated by unimpeachable documentary and oral evidence.*
> *2. The property transferred by virtue of the Gift Deed was clearly identifiable by the specific boundary description contained in its Schedule and the mis-*

description of the Dag numbers did not hamper proper identification of the property conveyed. Accordingly, the plaintiff had acquired right, title interest and possession over the suit land by virtue of the said deed of gift.
3. Defendants no. 1 to 6 had no saleable interest to sell the suit land. Furthermore, the land covered by the alleged subsequent sale deed was distinct and had no relation with the suit land."

ix. Two separate appeals against the judgment and decree dated 21.05.2001 were preferred:

a. Title Appeal No. 15/2001 by respondent no. 21 herein (original defendant no. 2),

b. Title Appeal No. 17/2001 by respondent no.1 herein (original defendant no. 14, being the alleged subsequent purchaser).

x. The First Appellate Court *vide* two different judgments, both dated 17.06.2006, affirmed the findings of the Trial Court that the Gift Deed was validly executed in favour of the plaintiff and possession was handed over to the plaintiff through his mother. It was further reiterated that despite mis-description of the suit land in the Gift Deed, the Schedule land was clearly identifiable, and that the plaintiff had proved his title thereon.

xi. The original defendants being dissatisfied with the judgment and order passed by the First Appellate Court preferred two second appeals in the High Court.

xii. The High Court *vide* its common judgment and order dated 09.10.2015 affirmed the finding of the Trial Court and the Appellate Court that: (i) the Gift Deed was validly executed and delivery of possession in pursuance thereof had taken place; (ii) that the mis-description was a mere irregularity that did not affect the identity of the property.

xiii. The relevant observations made by the High court in para 29 and 30 respectively of its impugned judgment reads thus:

> *"29. In the instant case, there is no evidence of any oral gift. Both the courts below had held that the gift deed, Ext. 1, to be duly executed by the donor, who was the grandfather of the plaintiff. The gift deed also indicated the purpose for which the gift was made, namely, the plaintiff would not have inherited any property of the donor as the plaintiff's father had expired during the lifetime Nails of the donor and as Risa Msg each under the Mahomedan Law, son of a pre-deceased son is not entitled to inherit ancestral property. The plaintiff and PW 2, the attesting witness, had deposed towards execution of the gift deed by the grandfather of the plaintiff and their evidence is not impeached in any manner and as such, it must be held that the gift deed was duly executed by the grandfather of the plaintiff. With regard to acceptance of the gift and delivery of possession, I am inclined to uphold the view taken by the learned courts below that mother of the plaintiff had accepted the gift and taken delivery of possession. I am Unable to accept the submission advanced by Mr. Kalita and Mr. Purkayastna that acceptance of the gift by the mother of the plaintiff was an afterthought, merely because in the plaint, the said fact was not expressly mentioned. Absence of any recital in the gift deed that gift was accepted and delivery of possession was given will not be of*

any consequence in respect of a gift under the Mahomedan Law. The learned courts below, on the basis of Ext. 2 and Ext, 9, came to the conclusion that the aforesaid deeds established that plaintiff was delivered possession of the property pursuant to the gift. A finding was also recorded by the learned courts below that the suit land as described in the plaint conforms to the boundary given in Ext, 1 and that Dag No. 174 of 2nd R.S. Patia No. 7 and Dag No, 175 of 2nd R.S. Patta No. 109 are adjacent dags. In that view of the matter, the learned courts below were justified to hold that there was mis-description with regard the dag numbers in the gift deed.

30. When there is no doubt as to the identity of the land and there is only mis-description that could be treated as a mere irregularity. If no boundaries had been given in the gift deed, matter would have been different. But in the instant case, both boundaries and dag numbers are mentioned and in the circumstances of the case, mistakes in the dag numbers must be treated as a mere mis-description not affecting the identity of the property gifted."

(Emphasis Supplied)

xiv. It appears from the above that although the High Court agreed with the two Courts below as regards the Gift Deed being validly executed, yet it went on to allow the two second appeals and thereby, dismissed the suit of the plaintiffs on the ground that in the absence of challenge to the subsequent sale deed and omission on the part of the plaintiff to seek the consequential relief of cancellation of the sale deed, the plaintiff would be disentitled from obtaining a decree declaring his right, title and interest over the suit property.

xv. In the aforesaid context, we may reproduce paras 34, 35, 36 and 37 respectively of the impugned judgment. The same reads thus:

> *"34. However, there is another facet of the matter. Even if the plaintiff was entitled to have right, title and interest on the basis of the gift deed, the question arises as to whether in absence of any challenge to the sale deed, Ext. A, on the basis of which the defendant No. 14 had taken possession over a part of the suit property, the plaintiff would be entitled to the reliefs prayed for in the suit.*
>
> *35. The plaintiff by way of amendment prayed for recovery of khas possession without challenging the sale deed. The learned lower appellate court before which the question was raised that the plaintiff would not be entitled to the reliefs as prayed for in absence of the challenge made to the sale deed, skirled the issue and did not give any decision on the question posed.*
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> *36.In Md. Noorul Hoda v. Bibi Raifunnisa and ors., reported in (1996) 7 SCC 767, the Apex Court had laid down that when the plaintiff seeks to establish his title to the property which cannot be established without avoiding a decree by a court or an instrument that stands as an insurmountable obstacle in his way, the plaintiff has to seek a declaration and have the decree or the instrument cancelled or set aside. Similar view is taken by the Apex Court in the case of Abdul Rahim and ors. v. Sheikh Abdul Zabbar and ors., reported in (2009) 6 SCC 140.*
>
> *37. In the facts of the case, a prayer for cancellation of Ext. A as a consequential relief was necessary to enable the plaintiff to get a decree declaring his right, title and interest. If was incumbent upon the plaintiff*

to have challenged the sale deed. It must not be forgotten that suit land was mutated in the names of the vendors of the sale deed by way of inheritance and there was no objection by the plaintiff ~ to such mutation. That apart, dag numbers were also wrongly given in the gift deed, Ext. 1 and the same were not corrected and rectified. Without there being any challenge to Ext. A, the learned courts below proceeded to embark upon an enquiry to find out legality and validity of the sale deed and whether the defendant No. 14 could have taken possession of land in Dag No. 174 by virtue of such sale deed. The exercise undertaken by the courts below was impermissible in law. In absence of a declaration that the sale deed is invalid in law, which was not sought for, learned courts below could not have granted a decree declaring right, title and interest in favour of the plaintiff and for recovery of khas possession from the defendant No. 14 in respect of, the land which was sold to him through the sale deed, Ext. A."

5. In such circumstances referred to above, the original plaintiffs are here before this Court with the present appeal.

B. SUBMISSIONS ON BEHALF OF THE APPELLANTS

6. Mr. Parthiv K. Goswami, the learned senior counsel appearing for the plaintiffs vehemently submitted that the High Court committed an egregious error in passing the impugned judgment and order. He would submit that the High Court erred in setting aside the decree passed in favour of the plaintiff on the ground that the consequential relief of cancellation of the subsequent sale deed had not been prayed for in the suit. He would submit that the plaintiff had acquired right,

title and possession over the suit property by virtue of a prior, validly executed and duly registered Gift Deed in 1958, and the said finding stands affirmed even in the impugned order. He submitted that the alleged subsequent sale deed dated 05.05.1997 which forms the basis for the claim of respondent no.1 herein is *void-ab-initio* and *non est* on account of the fact that it was executed by vendors who were not competent to transfer it in terms of Section 7 of the Transfer of Property Act, 1882.

7. It was argued that a vendor cannot transfer a title to the vendee better than what he possesses. It was submitted that once the plaintiff has successfully established his right, title and interest over the suit property based on a prior instrument, it was not incumbent upon him to seek cancellation of the subsequent sale deed which was *void-ab-initio*.

8. The learned counsel in support of his aforesaid submissions placed strong reliance on the decision of this Court in the case of ***Sk. Golam Lalchand v. Nandu Lal Shaw & Ors.,*** reported in **2024 SCC OnLine SC 2456.**

9. In the last, it was argued that the subsequent sale deed has been otherwise also specifically found by the Civil Judge to have no relation to the suit land covered by Dag Nos. 174 and 175 respectively. He invited our attention to the following findings recorded by the High Court:

> *"But from Ext.5 (Settlement Map of Mouza Niz Banskandi Part-11), it transpires that the said Purchased land has no relation with the suit land, covered by dag No.174 and Part of dag No.175. Though in the schedule of Ext.A; there is mention of sale of 2 bighas 14 kathas 7 chhattaks of land in Dag No.174, but the boundary description of the land does not refer to any land of Dag No.l74. From the Ext.S, it is revealed that land appertaining to Dag No. 174 situates at a distance from Dag No: 21/22 intervened by many plots under different dags and hence both the plot of lands cannot be sold by a ·single boundary. The boundaries given in the schedule of Ext.A rather refer a complete different plot of land near the plot of land covered under Dag No.20 of the Said Mouza, i.e. towards adjacent South of Dag No.20. It is, therefore, proved that the defendant No.14 Habibur Rahman acquired no right, title and interest over the suitland appertaining to Dag Nos.174/ 175 and he has been possessing the same illegally."*
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> (Emphasis supplied)

10. The learned counsel submitted that in view of the specific finding recorded by the Trial Court that the land covered by the subsequent sale deed was distinct and had no relation with the suit land, the High Court fell in error in setting aside the decree declaring the right, title and interest of the plaintiff over the suit land, more so, in light of the fact that the said findings were not disturbed or interfered within the impugned order.

11. 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.

C. SUBMISSIONS ON BEHALF OF THE DEFENDANTS:

12. Mr. Avijit Roy, the learned counsel appearing for the defendants vehemently 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 order. The counsel would submit that the High Court rightly allowed the two appeals and thereby dismissed the suit instituted by the plaintiff on the ground that the plaintiff failed to challenge the subsequent sale deed and thus the omission on the part of the plaintiff to seek the consequential relief of cancellation of the sale deed would disentitle the plaintiff from seeking a declaration as regards his right, title and interest over the suit property. The learned counsel submitted that the High Court rightly held at para 37 of its impugned judgment that without there being any challenge to the sale deed, the courts below could not have proceeded to embark upon an enquiry to find out the legality and validity of the sale deed and further whether the defendant no. 14 i.e., respondent no. 1 herein could have taken over the possession of land in Dag No. 174 by virtue of such sale deed. The exercise undertaken by the courts below was impermissible in law. In the absence of a specific declaration that the sale deed is invalid in law, which was not sought for, the courts below could not have granted a decree declaring right, title and interest in favour of the plaintiff and for recovery of possession of khas from the defendant no. 14 i.e., respondent no. 1 herein, in respect of the land which was sold to him through the sale deed dated 05.05.1997.

13. The counsel further submitted that under the Specific Relief Act, 1963, (for short, "**the Act, 1963**") the aggrieved can seek cancellation of a registered instrument on the ground of fraud, by filing a suit under Section 31. In case a person, without any title, executes a sale deed, the real owner may file a suit under Section 34 of the Act, 1963, if his peaceful enjoyment of ownership right is impinged due to the said sale. He also argued that the provision of Section 34 of the Act, 1963 was not discussed in ***Sk. Golam Lalchand*** *(supra)*.

14. It was argued that in order to obtain the relief of declaration, the plaintiff must establish that (i) the plaintiff at the time of institution of the suit was entitled to any legal character or any right to any property, (ii) the defendant had denied or was interested in denying the character or the title of the plaintiff, (iii) the declaration asked for was a declaration that the plaintiff was entitled to a legal character or to a right to property, and (iv) the plaintiff was not in a position to claim any further relief. In the present case the answering respondents/ defendant no. 14 as the purchaser, clearly denied the claim of title by the plaintiffs over the suit land.

15. It was also argued that even assuming without admitting that the plaintiffs have a legal right over the suit land, in that case, this Court in ***Ram Rattan v. State of U.P.*** reported in **(1977) 1 SCC 188** had held that a true owner has every right to dispossess or throw out a trespasser while he is in the act or process of trespassing but this right is not available to the true owner if the trespasser has been

successful in accomplishing his possession to the knowledge of the true owner. In such circumstances, the law requires that the true owner should dispossess the trespasser by taking recourse to the remedies under the law. Therefore, in the instant case, the High Court rightly held at para 37 of the impugned judgment that without there being any challenge to the sale deed, the courts below could not have proceeded to embark upon an enquiry to test the legality and validity of the sale deed and whether the defendant no. 14 could have taken over the possession of land in Dag No. 174 by virtue of such sale deed.

16. The learned counsel in support of his aforenoted submissions placed strong reliance on the following two decisions:

i. ***Mohd. Noorul Hoda v. Bibi Raifunnisa*****,** reported in **(1996) 7 SCC 767**.

ii. ***Abdul Rahim & Ors v Sk. Abdul Zabar & Ors.*****,** reported in **(2009) 6 SCC 160**.

17. In such circumstances referred to above, the learned counsel appearing for the respondents prayed that there being no merit in the appeal, the same may be dismissed.

D. ANALYSIS

18. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the following question of law falls for our consideration:

"Whether the High Court was right in taking the view that the suit of the plaintiff for declaration of his title based on a valid Gift Deed should fail as the plaintiff omitted to pray for the consequential relief of cancellation of the sale deed or a declaration that the same is not binding on him?"

19. Before we proceed to answer the question of law as formulated above, we must look into Sections 31 and 34 of the Act, 1963 respectively. Section 31 reads thus:

> ***"Section 31. When cancellation may be ordered***.—
>
> *(1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.*
>
> *(2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation."*

20. A Full Bench of Madras High Court in ***Muppudathi Pillai v. Krishnaswami Pillai*** reported in **1959 SCC OnLine Mad 5** considered the scope of Sections 39 and 41 of Specific Relief Act, 1877 (which are now Sections 31 and 33 of the Act, 1963). The principle entrenched in Section 39 was explained thus:

> *"The principle is that such document though not necessary to be set aside may, if left outstanding, be a source of potential mischief. The jurisdiction under S.39 is, therefore, a protective or a preventive one. It is not confined to a case of fraud, mistake, undue influence etc. and as it has been stated it was to prevent a document to remain as a menace and danger to the party against whom under different circumstances it might have operated. A party against whom a claim under a document might be made is not bound to wait till the document is used against him. If that were so he might be in a disadvantageous position if the impugned document is sought to be used after the evidence attending its execution has disappeared. Section 39 embodies the principle by which he is allowed to anticipate the danger and institute a suit to cancel the document and to deliver it up to him. The principle of the relief is the same as in quia timet actions."*
>
> (Emphasis supplied)

21. It was further laid down as under:

> *"The provisions of S.39 make it clear that three conditions are requisite for the exercise of the jurisdiction to cancel an instrument: (1) the instrument is void or voidable against the plaintiff; (2) plaintiff may reasonably apprehend serious injury by the instrument being left outstanding; (3) in the circumstances of the case, the Court considers it proper to grant this relief of preventive justice. On the third aspect of the question the English and American authorities hold that where the document is void on its face the Court would not exercise its*

jurisdiction while it would if it were not so apparent. In India it is a matter entirely for the discretion of the Court"

"The question that has to be considered depends on the first and second conditions set out above. As the principle is one of potential mischief, by the document remaining outstanding, it stands to reason the executant of the document should be either the plaintiff or a person who can in certain circumstances bind him. It is only then it could be said that the instrument is voidable by or void against him. The second aspect of the matter emphasizes that principle. For there can be no apprehension if a mere third party, asserting a hostile title creates a document. Thus, relief under S.39 would be granted only in respect of an instrument likely to affect the title of the plaintiff and not of an instrument executed by a stranger to that title."

(Emphasis supplied)

22. In ***Deccan Paper Mills Company Limited v. Regency Mahavir Properties and Others*** reported in **(2021) 4 SCC 786**, this Court held that the proceedings under Section 31 of the Act, 1963 are *in personam* in nature and therefore, any question pertaining to Section 31 would be amenable to adjudication by an arbitral tribunal. While stating so, this Court explained the ambit and scope of Section 31 in detail and authoritatively held that the expression "any person" occurring in this provision does not include a third party but is restricted to either a party to the written instrument or any person who is bound by a party to the instrument. Placing reliance on ***Muppudathi Pillai*** *(supra),* this Court observed thus:

*"19**.** The Court then continued its discussion as follows : (Muppudathi Pillai case [Muppudathi*

Pillai v. Krishaswami Pillai, 1959 SCC OnLine Mad 314 : (1959) 72 LW 543] , SCC OnLine Mad paras 13-16)

> *"13. … The provisions of Section 39 make it clear that three conditions are requisite for the exercise of the jurisdiction to cancel an instrument : (1) the instrument is void or voidable against the plaintiff; (2) plaintiff may reasonably apprehend serious injury by the instrument being left outstanding; (3) in the circumstances of the case the court considers it proper to grant this relief of preventive justice. On the third aspect of the question the English and American authorities hold that where the document is void on its face the court would not exercise its jurisdiction while it would if it were not so apparent. In India it is a matter entirely for the discretion of the court.*
>
> *14. The question that has to be considered depends on the first and second conditions set out above. As the principle is one of potential mischief, by the document remaining outstanding, it stands to reason the executant of the document should be either the plaintiff or a person who can in certain circumstances bind him. It is only then it could be said that the instrument is voidable by or void against him. The second aspect of the matter emphasises that principle. For there can be no apprehension if a mere third party asserting a hostile title creates a document. Thus relief under Section 39 would be granted only in respect of an instrument likely to affect the title of the plaintiff and not of an instrument executed by a stranger to that title.*
>
> *15. Let us take an example of a trespasser purporting to convey the property in his own right and not in the right of the owner. In such a case a mere cancellation of the document would not remove the cloud occasioned by the assertion of a hostile title, as such a document even if cancelled would not remove the assertion of the hostile title. In that case it would be the title that has got to be judicially adjudicated and*

declared, and a mere cancellation of an instrument would not achieve the object. Section 42 of the Specific Relief Act would apply to such a case. The remedy under Section 39 is to remove a cloud upon the title, by removing a potential danger but it does not envisage an adjudication between competing titles. That can relate only to instruments executed or purported to be executed by a party or by any person who can bind him in certain circumstances. It is only in such cases that it can be said there is a cloud on his title and an apprehension that if the instrument is left outstanding it may be a source of danger. Such cases may arise in the following circumstances : A party executing the document, or a principal in respect of a document executed by his agent, or a minor in respect of a document executed by his guardian de jure or de facto, a reversioner in respect of a document executed by the holder of the anterior limited estate, a real owner in respect of a document executed by the benamidar, etc. This right has also been recognised in respect of forged instruments which could be cancelled by a party on whose behalf it is purported to be executed. In all these cases there is no question of a document by a stranger to the title. The title is the same. But in the case of a person asserting hostile title, the source or claim of title is different. It cannot be said to be void against the plaintiff as the term void or voidable implies that but for the vitiating factor it would be binding on him, that is, he was a party to the contract.

16. There is one other reason for this conclusion. Section 39 empowers the court after adjudicating the instrument to be void to order the instrument to be delivered up and cancelled. If the sale deed is or purported to have been executed by a party, the instrument on cancellation could be directed to be delivered over to the plaintiff. If on the other hand such an instrument is executed by a trespasser or a person claiming adversely to the plaintiff it is not possible to

conceive the instrument being delivered over not to the executant but his rival, the plaintiff."

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21. A reading of the aforesaid judgment [Muppudathi Pillai v. Krishaswami Pillai, 1959 SCC OnLine Mad 314 : (1959) 72 LW 543] of the Full Bench would make the position in law crystal clear. The expression "any person" does not include a third party, but is restricted to a party to the written instrument or any person who can bind such party. Importantly, relief under Section 39 of the Specific Relief Act, 1877 would be granted only in respect of an instrument likely to affect the title of the plaintiff, and not of an instrument executed by a stranger to that title. The expression "any person" in this section has been held by this Court to include a person seeking derivative title from his seller [see Mohd. Noorul Hoda v. Bibi Raifunnisa [Mohd. Noorul Hoda v. Bibi Raifunnisa, (1996) 7 SCC 767] , at p. 771]. The principle behind the section is to protect a party or a person having a derivative title to property from such party from a prospective misuse of an instrument against him. A reading of Section 31(1) then shows that when a written instrument is adjudged void or voidable, the Court may then order it to be delivered up to the plaintiff and cancelled—in exactly the same way as a suit for rescission of a contract under Section 29. Thus far, it is clear that the action under Section 31(1) is strictly an action inter parties or by persons who obtained derivative title from the parties, and is thus in personam."

(Emphasis supplied)

23. The decision in ***Sk. Golam Lalchand*** *(supra)*, which has been canvassed by the counsel appearing on behalf of the plaintiff, observed as follows:

"23. A faint effort was made in the end to contend that the plaintiff-respondent Nandu Lal had not asked for any

relief of cancellation of the sale deed by which the property was purchased by the defendant-appellant S.K. Golam Lalchand and, therefore, is not entitle to any relief in this suit. The argument has been noted only to be rejected for the simple reason that Section 31 of the Specific Relief Act, 1963 uses the word 'may' for getting declared the instrument as void which is not imperative in every case, more particularly when the person is not a party to such an instrument."

(Emphasis supplied)

24. This observation made in ***Sk. Golam Lalchand*** *(supra)* must necessarily be understood in the context of our preceding discussion. All that has been stated therein is that as Section 31 of the Act, 1963 uses the word "may", it is not a mandate, even as regards the parties to the instrument or the persons claiming through or under them, to seek for the cancellation of an instrument which is otherwise void and therefore, it cannot be contended that a stranger to that instrument must necessarily seek for its cancellation. By no stretch of imagination can this be construed to mean that when there exists an instrument with respect to the same property but executed by some other person, the plaintiff despite being a stranger to that instrument would fall under the scope of "any person" in Section 31 of the Act, 1963.

25. Having explained the scope of Section 31, we now deem it necessary to examine Section 34 of the Act, 1963, which reads thus:

"Section 34. Discretion of court as to declaration of status or right.—
Any person entitled to any legal character, or to any right as to any property, may institute a suit against any

person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation.—A trustee of property is a "person interested to deny" a title adverse to the title of some one who is not in existence, and whom, if in existence, he would be a trustee."

26. Section 34 entitles a person to approach the appropriate court for a declaration, if that person is entitled to (i) any legal character or (ii) any right as to any property. "Legal character" and "right to property" are used disjunctively so that either of them, exclusively, may be the basis of a suit. The disjunctive '*or*' cannot be read as a conjunctive '*and*'.

27. The object of the proviso to Section 34 is to obviate the necessity for multiple suits by preventing a person from getting a mere declaration of right in one suit and then subsequently seeking another remedy without which the declaration granted in the former suit would be rendered otiose. However, the answer to the question whether it was incumbent upon the plaintiff to ask for further relief must depend on the facts of each case and such relief must be appropriate to and consequent upon the right or title asserted. "Further relief" must be a relief flowing directly or necessarily from the declaration sought, i.e., the relief should not only be capable of being granted but of being enforced by the court and such relief should be necessary to make the

declaration fruitful. The relief must also be such that it is not automatically granted to the plaintiff by virtue of the declaration already sought for.

28. The words used in proviso to Section 34 are "*further relief*" and "*no other relief*". Since, a further relief must flow necessarily from the relief of declaration, if such further relief is remote and is not connected in any way with the cause of action which has accrued in favour of the plaintiffs, then there is no need to claim a further relief and the proviso to Section 34 will not be a bar. All that the proviso forbids is a suit for pure declaration without necessary relief where the plaintiff being able to seek such a relief, has omitted to do so. The proviso must not be construed in a manner which compels the plaintiff to sue for any and all the reliefs which could possibly be granted to him. The plaintiff must not be debarred from obtaining a relief that he wants for the reason that he has failed to seek a relief which is not directly flowing from the relief of declaration already sought for.

29. Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed under Section 31 of the Act, 1963. But if a non-executant seeks annulment of a deed, he has to only seek a declaration that the deed is invalid, or *non est*, or illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to 'A' and 'B' — two brothers. 'A' executes a sale deed in favour of 'C'. Subsequently 'A' wants to avoid the sale. 'A' has to sue for cancellation of the deed. On the other hand, if 'B', who is not the executant of the deed, wants to

avoid it, he has to sue for a declaration that the deed executed by 'A' is invalid/void and *non est*/ illegal and he is not bound by it. In essence, both may be suing to have the deed set aside or declared as non-binding. [See : ***Suhrid Singh alias Sardool Singh v. Randhir Singh & Ors.,*** reported in **(2010) 12 SCC 112]**

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 non-existent and sue for their right as if it did not exist."*
>
> (Emphasis supplied)

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) & Anr. v. Ramaswami Konar & Anr.,*** 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)

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. The question that remains is whether the plaintiff ought to have sought for a declaration that the sale deed dated 05.05.1997 was inoperative in so far as he is concerned or is not binding on him.

35. One should not lose sight of the fact that a suit for declaration of title to be decided by a court takes within its fold, consideration of several

factors as to how the plaintiff is entitled for declaration of title. In such cases, the plea of the defendants about the validity, enforceability and binding nature of any document defeating the title of the plaintiff have also to be considered. In such cases, the court naturally views the evidence on both sides leaving apart the frame of the suit.

36. Therefore, the High Court having concurred with the Courts below on the legality and validity of the Gift Deed should not have dismissed the suit only on the ground that the plaintiff failed to pray for cancellation of the sale deed. The High Court should have kept the settled position of law in mind that the declaration of title is as good as a relief of cancellation of the sale deed or at least, a declaration that the sale deed is not binding on the plaintiff being void and thus *non est*.

37. Furthermore, it is a well-known and settled principle of law that the plaint must be read as a whole and the actual relief sought can also be culled out from the averments of the plaint. Those reliefs can be granted, if there is evidence and circumstances justifying the grant of such relief, though not directly or specifically claimed, or asked as a relief. The plaintiff had averred in his plaint that the original defendant nos. 1 to 6 had no title or saleable rights over the suit property. This reflects the intention of the plaintiff to not be bound by any instrument which they may have executed in favour of another party.

38. Courts have ample inherent powers and indeed it is their duty to shape their declaration in such a way that they may operate to afford

the relief which the justice of the case requires. Section 34 of the Act, 1963 is not exhaustive of the cases in which a declaratory decree may be made and the courts have power to grant such a decree independently of the requirements of the Section. Section 34 merely gives statutory recognition to a well-recognised type of declaratory relief and subjects it to a limitation, but it cannot be deemed to exhaust every kind of declaratory relief or to circumscribe the jurisdiction of courts to give declarations of right in appropriate cases falling outside Section 34. The circumstances in which a declaratory decree under Section 34 should be awarded is a matter of discretion depending upon the facts of each case. [See: ***Supreme General Films Exchange Ltd. v. His Highness Maharaja Sir Brijnath Singhji Deo of Maihar and Ors***., reported in **(1975) 2 SCC 530**]

39. Before we close the matter, we should also explain, why the two judgments upon which strong reliance has been placed on behalf of the defendants are of no avail to them.

40. In ***Mohd. Noorul*** *(supra)*, the petitioner therein had, through a *benamidar*, purchased the suit property which was jointly owned by three persons. Pursuant thereto, a partition suit was filed by the respondent (one of the joint owners), and a partition decree was passed, wherein the suit property fell to the share of the respondent. Almost seven years after the decree, the petitioner therein got a sale deed in respect of the suit property executed by his *benamidar* in his favour, and filed the underlying suit for setting aside the partition decree on the grounds of fraud, collusion, etc.

41. The question as formulated in para 6 of the said judgment was solely limited to whether the suit was barred by limitation, having been filed much beyond a period of three years (stipulated under Article 59) from the date of the partition decree sought to be set aside. The petitioner therein contended that the limitation under Article 59 would not apply as he was not a party to the partition decree sought to be set aside in the underlying suit.

42. This Court had held that the appellant would be deemed to have constructive notice through his *benamidar*, who was a party thereto, and that Article 59 read with Section 31 of the Act, 1963 would apply not only to parties to the decree or the instrument sought to be cancelled, but also to 'persons' claiming through or under them. It was in the said factual conspectus that this Court had held that:

> *"[...] When the plaintiff seeks to establish his title to the property which cannot be established without avoiding the decree or an instrument that stands as an insurmountable obstacle in his way which otherwise binds him, though not a party, the plaintiff necessarily has to seek a declaration and have that decree, instrument or contract cancelled or set aside or rescinded. [...]"*

43. In ***Abdul Rahim*** *(supra)*, the question of law as framed in para 1 of the decision pertains to the interpretation and/or application of the Islamic law on gift *vis-à-vis* handing over of possession of the property gifted, and whether the underlying suit therein was barred by limitation on account of Article 59 of the Limitation Act, 1963. The

dispute involved therein pertained to the validity of a gift deed executed by the father of the contesting parties in favour of the petitioner. The contentions raised by the respondents were that (i) the said gift deed was invalid as possession had not been handed over to the petitioners and the property continued to be in possession of the tenants, and rent being paid to the petitioners was not reflective of transfer of possession as even before the alleged execution of the gift deed, rent was being paid to the petitioners; (ii) their suit was not barred by limitation.

44. This Court proceeded to hold that the essentials of a valid gift deed can be met even by constructive handover of possession and did not require actual occupation of the property by the donee. On the question of limitation, this Court held the suit filed in 1980 to be barred, as it was filed beyond the three-year period (stipulated in Article 59) from the date the respondent had knowledge of the instrument/transaction sought to be set aside. The judgment in ***Mohd. Noorul*** *(supra)* was relied upon by this Court in para 29 on the aspect of limitation.

45. The plaintiff herein cannot be said to be otherwise bound by the sale deed dated 05.05.1997 executed in favour of the respondent no. 1 as stated in ***Mohd. Noorul*** *(supra)* for the simple reason that unlike a *benamidar,* he is not a person claiming through or under the vendors of that instrument i.e. original defendant no. 1 to 6. Furthermore, there exist concurrent findings of the Courts below holding the Gift Deed as valid and the respondent has also chosen not to challenge the same. In such a circumstance, there arises no occasion or

overwhelming reason for us to apply the dictum laid down in ***Abdul Rahim*** *(supra)* in the facts of the present case.

46. In the result, the appeal succeeds and is hereby allowed. The impugned common judgment and order dated 09.10.2015 passed by the High Court in Regular Second Appeal No. 3 of 2007 and Regular Second Appeal No. 11 of 2007 is hereby set aside and the original decree passed by the Trial Court as affirmed by the First Appellate Court is hereby restored.

47. No order as to costs.

48. Pending application(s), if any, also stand disposed of.

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

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

New Delhi,
April 23, 2025.