

SHANTI DEVI (SINCE DECEASED) THROUGH LRS. GORAN VS JAGAN DEVI & ORS.

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

2025 INSC 1105

RATIO: WHEN SALE DEED IS VOID, SUIT FOR POSSESSION IS GOVERNED BY LIMITATION PERIOD OF 12 YEARS UNDER ARTICLE 65, INSTEAD OF ARTICLE 59, OF LIMITATION ACT, 1963

Property – safety of the future on one hand and repository of memories on the other. When future and memories are put to risk by someone’s greed, decades seem to dissolve in the struggle to reclaim them back. Family of the Respondent-Plaintiff went through the same struggle from 1984 till 2025 to, finally, get back what rightfully belonged to them.

In the process of deciding the dispute, the Supreme Court laid down the law regarding the period of limitation to file a suit in case the sale deed in question is void. It was held that, in such a case, the suit of possession would be governed by Article 65 of the Limitation Act, 1963 rather than Article 59 thereof and the period of limitation for the same would be 12 years from the date of knowledge and not 3 years, as provided in Article 59.

I. FACTS

The facts of the case, in brief, are as follows:

- The original Plaintiff instituted a suit for permanent injunction, thereby praying to restrain the original Defendant from interfering with her peaceful possession to the extent of one-third of the Plaintiff in the Suit property. Alternatively, it was prayed that a joint possession be granted along with the Defendant while declaring the sale deed dated 14-06-1973 as null and void to the extent of Plaintiff’s share therein.
- After considering the contentions of both parties, the issues framed by the Trial Court came to be decided against the Plaintiff by the Trial Court and the Suit was dismissed vide judgment and decree dated 14-10-1991.
- Aggrieved by the judgment and decree, the Plaintiff preferred the First Appeal. Main thrust of Plaintiff’s argument was that it would be Article 65 of the Limitation Act and the Suit could be filed within 12 years from the date when the possession of Defendant would be deemed adverse to the Plaintiff. On the other hand, the Defendant argued for a limitation period of three years. The First Appellate Court agreed with the contention of the Plaintiff and allowed the Appeal.

- Aggrieved by the order of First Appeal, the original Defendant filed a Second Appeal which was dismissed and the verdict in the First Appeal was upheld. However, the High Court concluded that the limitation in the present case would be governed by Article 59 of the Limitation Act, 1963 and not Article 65.
- Challenging the same, the original Defendant had approached the Supreme Court. The limited question for adjudication was whether the suit was time barred or not.

II. JUDGMENTS RELIED ON

In order to arrive at its finding, the Supreme Court discussed various judgments which threw light on the aspects relevant to the case at hand. Following are the ratios laid down by the judgments:

- In **State of Maharashtra vs Pravin Jethalal Kamdar, 2000 SCC Online SC 522**, it was held that, in case of void and non-est documents, it is enough to file a suit for possession to which Article 65 of Limitation Act, 1963 would apply.
- In **Prem Singh vs Birbal, (2006) 5 SCC 353**, Supreme Court laid down that Article 59 of the Limitation Act, 1963 would apply to ‘fraudulent’ transaction that are ‘voidable’ and not to those which are ‘void’ i.e. documents which are prima facie valid and not those which are presumptively invalid. No decree of setting aside is needed in case of a document that is void as the same is non-est in the eyes of law. Supreme Court carved a distinction between fraudulent representation qua ‘character of a document’ and ‘content of a document’. Former category renders the document ‘void’ and the latter renders the same as ‘voidable’.
- Further, in **Hussain Ahmed Chaudhary vs Habibur Rehman, 2025 SCC Online SC 892**, it was held that a person who is not a party to an instrument would not be obliged to seek its cancellation. Such an instrument would neither affect the title nor would it be binding on that person.
- The Supreme Court also relied on the judgment of **Kewal Krishna vs Rajesh Kumar, (2022) 18 SCC 489** which dealt with the aspect of sale consideration. It was held that the sale of an immovable property must be for a price, and such payment is essential, even if it is payable in future. Sale deed without a price is not a sale, specifically under Section 54 of the Transfer of Property Act, 1882.

III. ANALYSIS

- **Whether fraud was qua the character or content of the sale deed:** In this case, both First Appellate Court and High Court concluded that the Plaintiff did not execute the sale deed as it was proved that it was not her thumb impression thereon. Hence, it affects the character thereof which renders the sale deed void. In fact, original sale deed was also not produced by the Defendant to support her case. Hence, it was held that the

Plaintiff was not obliged to seek the cancellation of the sale deed and, as such, Article 59 of the Limitation Act would not apply to the instant case.

- **Whether Plaintiff sought declaration in her plaint:** As per the ratio of Hussain Ahmed (supra), a declaration must be sought qua non-applicability of the document in the facts and circumstances of the case. However, this intention could be culled out by a holistic reading of the plaint. Where character of the document is assailed, this requirement is implicitly satisfied, since the averment regarding fraud of document indicates that Plaintiff does not intend to be bound by it. As such, in the instant case, this requirement can be said to have been satisfied.
- **What if Plaintiff makes a prayer for declaration of nullity:** As per the finding in State of Maharashtra (supra), it would be of no consequence even if such a prayer is made as the document would be void for it being fraudulent. Hence, limitation for a suit of possession based on title would be 12 years and the same would be governed by Article 65 of the Limitation Act.
- **Whether the essential requirement of sale consideration was satisfied:** In the instant case, the Plaintiff had averred that she had not received any sale consideration qua the sale deed in question. As per the contents of the sale deed, part payment had already been made to the Plaintiff and the rest was supposed to be paid at the time of execution of the sale deed. Although, the endorsement of the sub-registrar demonstrated that the balance sale consideration had been paid to the Plaintiff, both the First Appellate Court and the High Court refused to agree with this contention, for, inter alia, the witnesses of the Defendant were either not independent witnesses or had passed away before the statement could be recorded. As such, the factum of the balance payment could not be said to have been substantiated. Let alone the part payment, the Defendant could not even prove the averment qua the initial payment. It was held that, in the absence of the sale consideration, the sale deed is void and Plaintiff was not required to seek its cancellation and Article 59 of the Limitation Act would not apply.

IV. FINDING

In the facts and circumstances of the case, it was held that the Plaintiff could not be said to have executed the sale deed and, as such, she could maintain the suit for possession of property based on title within a period of 12 years from the date of knowledge that possession was adverse to her. High Court committed an error in observing that it would be Article 59 that would apply to the case.