

**HIGH COURT OF TRIPURA
AGARTALA**

RSA No.47 of 2022

Sri Uttam Roy,
S/O. Sukhendu Bikash Roy
Of village Mirzapur (now Sarashima),
P.S. Belonia, South Tripura.

..... Appellant

Versus

- 1. Smt. Jita Roy (Datta),**
W/O. Sri Dilip Roy
Of Village Mirzapur (now Sarashima),
P.S. Belonia, South Tripura.
- 2. Smt. Suniti Majumder (Chowdhury),**
W/O. Sri Arun Baran Chowdhury of Aswini Datta Road,
Damdam, Kolkata, P.S. Damdam,
District: Kolkata-28.

.....Respondents

For Appellant(s)	:	Mr. Sankar Deb, Sr. Adv, Mr. S. Datta, Adv.
For Respondent(s)	:	Mr. S. M. Chakraborty, Sr. Adv, Ms. P. Chakraborty, Adv.
Date of Hearing	:	29.07.2024
Date of delivery of Judgment and Order	:	06.08.2024
Whether fit for Reporting	:	YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This appeal under Section 100 of CPC is preferred challenging the judgment dated 16.08.2022 and decree dated 17.08.2022 delivered by Learned District Judge, South Tripura, Belonia in connection with case No. Title Appeal

No.16 of 2019. By the said judgment, Learned First Appellate Court was pleased to affirm the judgment dated 03.07.2019 and decree dated 15.07.2019 delivered by Learned Civil Judge, Junior Division, Belonia, South Tripura in connection with case No.T.S.24 of 2012.

02. Heard Learned Senior Counsel, Mr. Sankar Deb assisted by Learned Counsel Mr. S. Datta for the appellant and also heard Learned Senior Counsel, Mr. S. M. Chakraborty assisted by Learned Counsel, Ms. P. Chakraborty for the respondent No.1. None appeared on behalf of the respondent No.2 because as per order dated 15.03.2023, the appeal processed *ex-parte* against the said respondent. Before proceeding with the merit of this appeal, preferred under Section 100 of CPC, let us discuss about the subject matter of the suit filed by the respondent No.1 as plaintiff before the Learned Trial Court.

03. The case of the respondent-plaintiff before the Learned Trial Court in short was that the mother-in-law of the respondent-plaintiff namely Arati Bala Roy (Muhuri) got 1 kani 5 gandas i.e. 50 decimals of land as gift from one Nirmala Sundari Majumder under Mouja and T.K. Sarashima, Khatian No.615, 312 appertaining to C.S. Plot No.1291 and 1292 and the said mother-in-law of the respondent-plaintiff was in peaceful possession of the suit land. The said deed of gift was executed on 08.10.1975, thereafter, after the death

of said Arati Bala Roy, the property left by her was amicably partitioned amongst the legal heirs of said Arani Bala Roy (Muhuri). One of the legal heirs of said Arati Bala Roy, namely Smt. Chandana Bala Roy as per family settlement, got said 50 decimals of land in her share and on attaining majority said Chandana Bala Roy sold those .50 decimals of land in favour of the respondent-plaintiff and handed over possession of the same to her. But the defendant No.1 i.e. the present appellant herein, being the brother-in-law of the respondent-plaintiff disturbed her possession over the suit land measuring 0.6 decimal on the plea that he has purchased the said land from one Smt. Suniti Bala Majumder (Chowdhury), daughter of Nirmala Sundari Majumder (since dead). It was the further case of the respondent-plaintiff that after execution of gift deed for 6 decimals of land to the Arati Bala Roy, said Nirmala Sundari Majumder was never been in possession of the said land. However, said Nirmala Sundari Majumder somehow managed to incorporate her name in the revenue records and executed a Will in favour of her daughter Suniti Majumder, who later on sold the suit land i.e. 6 decimals of land by sale deed No.1-50 of 2009 to the defendant No.1 i.e. the appellant herein. On 25.07.2008 the appellant herein tried to occupy said 6 decimals land, but failed. Again on 12.06.2009, he tried to take possession of the said land but failed and after that the plaintiff filed a suit

which was numbered as T.S.34 of 2009 for declaration and for injunction and after that the said suit was withdrawn on 29.02.2012. It was the further case of the respondent-plaintiff that on 21.11.2009, the appellant forcefully dispossessed the respondent-plaintiff from the suit land. The present appellant as respondent No.1 appeared before the Learned Trial Court and submitted written statement, wherein it was mentioned that the suit was not maintainable for non-joinder of necessary party and the respondent-plaintiff has/had got no right, title and interest over the suit land and there was no cause of action.

It was further asserted that Nirmala Sundari Majumder did not execute any deed of gift in favour of Arati Bala Roy, nor gave any possession to said Arati Bala Roy. He also denied the partition of the land. It was further submitted that he purchased the suit land from one Suniti Bala Majumder by a registered sale deed. Hence, by the WS, the defendant No.1 i.e. the appellant herein prayed for dismissal of the suit with costs.

04. Upon the pleadings of the parties, following issues were framed:

ISSUES

- i) Whether the suit is maintainable in its present form and nature ?
- ii) Whether the plaintiff to a decree declaring her right, title and interest over the suit land ?

iii) Whether the Will executed after disposition of the land by way of sale is valid ?

iv) Whether the plaintiff is entitled to have the benefit of Section 48 of Transfer of Property Act ?

v) Whether the plaintiff is entitled to recovery of possession of the suit land ?

vi) Whether the plaintiff is entitled to any other consequential relief/reliefs and if so up to what extent?

05. The plaintiff in order to establish her claim adduced three witnesses and relied upon certain documents which were marked as exhibits in this case. On the other hand, the contesting defendant adduced three witnesses and relied upon certain documents which were marked as exhibits in support of his defence:

APPENDIX

A) PLAINTIFF WITNESSES :-

PW 1- Smt. Jita Datta (Roy),

PW 2- Sri Babul Das,

PW 3- Sri Rakhal Ch. Datta,

B) DEFENDANT WITNESSES :-

DW1- Sri Uttam Kr. Roy,

DW2- Sri Bishu Nandi,

DW 3-Dulal Ch. Shome,

C) PLAINTIFF EXHIBITS :-

i) Exbt.1 : Certified copy of order dated, 29.02.12 passed in TS- 34 of 09;

ii) Exbt.2 : Original of gift deed bearing no. I-5527 for the year 1978,

iii) Exbt.3 : Deed of family settlement bearing no. I-1894 ;

iv) Exbt.4 : Original sale deed bearing no. I-1705 for the year 1995;

v) Exbt.4/1 : Signature of Pw-3 on the sale deed no. I-1705;

vi) Exbt.5 : Certified copy of sale deed bearing no. I-50 for the year 2009;

vii) Exbt.6 : Certified copy of finally published Khatian no. 312 of Mouja Sarashima,

viii) Exbt.7 : Map of the suit land,

ix) Exbt.8 : Revenue receipt,

D) DEFENDANT EXHIBITS :-

i) Exbt.A : Khatian no. 494;

ii) Exbt.B (series) : The Will (five sheets);

iii) Exbt.C (series) : The unregistered Nadabi deed (two sheets);

iv) Exbt.D (series) :- Sale deed bearing no. I-50;

v) Exbt.D/1 : Signature of DW-3 on the sale deed bearing no.I-50,

06. Finally on conclusion of trial the Learned Trial Court below by judgment dated 03.07.2019 decreed the suit in favour of the respondent-plaintiff. The operative portion of the order of the Learned Trial Court runs as follows:

ORDER

“[10] In the result the case of the plaintiff it is decreed that the plaintiff is entitled to right, title and interest over the suit land and the Will executed is not valid as per law and that the plaintiff is entitled to benefit of Section 48 of T.P Act.

[11] It is also decreed that the plaintiff is entitled to right, title and interest over the 6 decimals of land mentioned in the A schedule of the land.

[12] It is also decreed that the plaintiff is entitled to recovery of possession of the suit land described in schedule B measuring 6 decimals equivalent to 3 gandas from the defendants and defendants are directed to hand over the vacant possession of the said suit land to the plaintiff. In case the defendants are not handing over the vacant possession to the plaintiff, then the plaintiff can pray for taking legal measures of getting the vacant possession of the land.

[13] The case is disposed of on contest.”

07. Challenging that judgment, the defendant No.1 as appellant preferred appeal before the Court of Learned District Judge, South Tripura, Belonia and the Learned District Judge by judgment dated 16.08.2022 was pleased to

dismiss the appeal upholding the judgment delivered by Learned Trial Court below. For the sake of convenience, I would like to refer herein below the operative portion of the judgment of the Learned First Appellate Court dated 16.08.2022 in connection with Title Appeal No.16 of 2019:

“[11] In the result, I find no merit in the appeal to interfere with the judgment and decree passed by learned trial Court in Case No. T.S. 24 of 2012. Therefore, the appeal merits rejection which I hereby do.

[12] Prepare appellate decree accordingly.

[13] Send back the L.C. record with a copy of this judgment and decree.

[14] The case is thus disposed of on contest.”

08. At the time of admission of appeal, this High Court by order dated 27.03.2023 formulated the following substantial questions of law:

“i) Whether the suit instituted by the plaintiff is barred by law of limitation?

ii) Whether the interpretation made by the learned Courts below as regards the document of title in favour of the plaintiff is perverse?”

09. At the time of hearing of argument, Learned Senior Counsel, Mr. Sankar Deb assisted by Learned Counsel, Mr. S. Datta for the appellant first of all drawn the attention of the Court referring page 18 of the memo of appeal i.e. the Annexure-A and submitted that in para No.13, Sub-clause (iv), the plaintiff in the original suit relied upon certified copy of sale deed bearing No.1-50 for the year

2009. He further submitted that the said plaint of the plaintiff, now the respondent No.1 herein was verified on 19.06.2009. Thereafter, Learned Senior Counsel, Mr. Sankar Deb drawn the attention of the Court referring the order dated 29.02.2012 passed by the then Learned Civil Judge (Junior Division), Belonia, South Tripura in connection with T.S.34 of 2009 i.e. the order regarding withdrawal of the suit. In support of his contention, Learned Senior Counsel further, submitted that the suit T.S.24 of 2012 was filed on 23.05.2012. Thereafter, again Learned Senior Counsel drawn the attention of the Court referring page No.9 i.e. para No.18 of the plaint of the plaintiff, now the respondent No.1 herein, in the original suit and further submitted that in page No.10 of the plaint, in the relief portion of prayer of the original plaintiff, no relief was sought for declaring the suit deed/sale deed bearing No.1-50 for the year 2009 void which was barred by the provisions of Section 34 and Section 31 of SR Act. Learned Senior Counsel for the appellant referring the said provision of Specific Relief Act submitted that both the Sections should be conjointly read together, but surprisingly, no relief was sought for by the original plaintiff in the suit for cancellation of the instrument for which the suit was not maintainable before the Learned Trial Court. It was further submitted by Learned Senior Counsel that the suit was barred by the law of limitation as per Article 58 and 59 of the

Limitation Act. But the Learned Courts below did not consider those provisions of law and decreed the suit in favour of the original plaintiff, now the respondent No.1 herein in this appeal.

Learned Senior Counsel also submitted that Arati Bala Roy as revealed from the record was the mother-in-law of the plaintiff and the mother of the original defendant i.e. the appellant herein. She alleged to have got 50 decimals of land including the alleged suit land measuring 6 decimals i.e. 3 gandas appertaining to Dag No.1292 which was not partitioned, because the said plot comprised total land measuring 26 decimals which was purchased by the appellant herein by sale deed dated 14.01.2009 which was executed by one Smt. Suniti Bala Majumder (Chowdhury), wife of Sri Arun Baran Chowdhury and accordingly, the same was mutated in her favour vide MR case No.250/04 in Khatian No.494 under Mouja and T.K.-Sarashima, Toudi No.223 surveyed in C.S. Plot No.2286.

Learned Senior Counsel for the appellant also submitted that said Suniti Bala Majumder (Chowdhury) got the said land along with other lands from one Nirmala Majumder on the basis of Will dated 09.08.1995. It was also submitted that said Suniti Majumder was all along in possession of the suit land and after that, she transferred the said land to the present appellant, who also got possession

over the same and the mutation record also confirms his ROR over the suit land but the Learned Trial Court below did not consider the same and passed the judgment ignoring the factual aspects for which the judgment of the Learned Trial Court and the Learned First Appellate Court suffers from perversities for which the interference of the Court is required. It was further submitted that the substantial question of law leans in favour of the present appellant herein, for which the judgment of the Learned First Appellate Court needs to be set aside and Learned Senior Counsel referred few citations which would be discussed in due course of time.

10. On the contrary, Learned Senior Counsel, Mr. S. M. Chakraborty for the respondent No.1 i.e. the original plaintiff strongly countered the submission made by Learned Senior Counsel for the appellant, Mr. Sankar Deb and first of all drawn the attention of the Court, referring the plaint filed by the respondent No.1 before the Learned Trial Court in Suit No.T.S.24 of 2012 wherein it was specifically stated that the sale deed was executed without any authority by Smt. Suniti Bala Majumder, bearing No.1-50 for the year 2009 being a fraudulent transaction is to be declared cancelled. So, according to Learned Senior Counsel, Mr. S. M. Chakraborty the suit suffers from non-declaration of instrument to be cancelled is not correct. He also submitted that initially a suit

was filed which was numbered as T.S.34 of 2009 wherein in Clause (b) of para No.14 i.e. the relief portion, specific relief was sought for cancellation and for declaring the sale deed bearing No.1-50 for the year 2009 to be void. And later on, due to some technical reasons, i.e. in the plaint, Purchase Deed was written in place of Gift Deed and the said suit was withdrawn with liberty to file a fresh suit and accordingly, the then Learned Trial Court by order dated 29.02.2012 in the said suit permitted the plaintiff, now the respondent No.1 herein, to withdraw the suit with liberty to file a fresh suit and according to Learned Senior Counsel, if both the plaints are conjointly read together, it would be clear that the submission of Learned Senior Counsel for the appellant is not correct and not tenable in the eye of law and cannot be considered, because in both the suits the same relief was sought for. So, the question of 'barred by limitation' as raised by Learned Senior Counsel for the appellant cannot be accepted and Learned Trial Court, after considering the evidence on record, decreed the suit in favour of the plaintiff, now the respondent No.1 herein, which was affirmed by the Learned First Appellate Court.

Learned Senior Counsel, Mr. S. M. Chakraborty further submitted that there was not a single whisper in the WS filed by the present appellant herein, before the Learned Trial Court regarding raising of any question on the point of

law of limitation and the point of limitation is a mixed questions of law and fact, so, at this stage, the appellant has got no authority to raise this plea before the High Court in the Second Appeal. Learned Senior Counsel, Mr. S. M. Chakraborty regarding point of limitation further submitted that the original suit T.S.34 of 2009 was filed on 19.06.2009 and the said suit was withdrawn on 29.02.2012 with the leave of the Court. So, Section 14(3) of the Limitation Act protects the right of the respondent No.1 herein i.e. the plaintiff of the original suit to file the suit. Learned Senior Counsel further submitted that in the suit before the Learned Trial Court, there was another prayer for recovery of possession of the suit property and for recovery of possession the period of limitation was 12 years. So, in both the way, according to Learned Senior Counsel, Mr. S. M. Chakraborty, the suit was not barred by the law of limitation as alleged by Learned Senior Counsel for the appellant and finally, Learned Senior Counsel, Mr. S. M. Chakraborty submitted that there was also no counter-claim from the side of the appellant as per provision of Order VIII, Rule 8 of CPC and finally, Learned Senior Counsel, Mr. S. M. Chakraborty submitted that there was no infirmity or irregularity in the judgment passed by Learned Trial Court which was affirmed by the Learned First Appellate Court and here in this appeal, no substantial question of law could be made for which this

present appeal is liable to be dismissed with costs. He also referred few citations.

11. I have heard detailed arguments of both the sides at length and gone through the records of the Learned Court below. Here in this case, prima facie it appears that regarding the title over the suit land, there were two sets of evidence. According to plaintiff, i.e. the respondent No.1 herein, originally the suit land along with other lands were belonged to one Nirmala Sundari Majumder who by deed of gift donated land measuring 50 decimals to her elder daughter, namely Arati Bala Roy (Muhuri), wife of Sukhendu Bikash Roy (Muhuri) by a registered deed of gift bearing No.1-5527 dated 08.10.1975 (**Exbt.-2**). From the said deed, it appears that from Old C.S. Plot No.1291, 44 decimals of land was given to her by way of deed of gift and from C.S. Plot No.1292, 6 decimals land was given to her by the said gift of deed. After that, the property of Arati Bala Roy was partitioned amongst her legal heirs by a deed of partition bearing No.1-1894 (**Exbt.-3,3/1 series**) and as per deed of partition, one of the legal heirs, Smt. Chandana Roy got said land measuring 50 decimals and since she was minor on that relevant point of time, so, on her behalf her father, Sri Sukhendu Bikash Roy became the guardian. Thereafter, said Smt. Chandana Bala Roy when became major, she, by a deed of sale vide No.1-1705 of 95 dated 23.09.1992 sold the

said land of Arati Bala Roy to the respondent No.1, herein, i.e. the original plaintiff measuring 50 decimals which includes the suit land, i.e. 44 decimals of land from C.S. Plot No.1291 corresponding to present C.S. Plot No.2270 and 6 Decimals from Old C.S. Plot No.1292 which comprised of 26 decimals of land. This is the story of the respondent No.1 in support of her title over the suit land.

12. On the other hand, the present appellant as defendant took the plea that one Smt. Suniti Majumder (Chowdhury), wife of Arun Barun Chowdhury by a deed of sale bearing No.1-50 dated 14.01.2009 sold the suit land measuring 6 decimals (3 gandas) appertaining to C.S. Plot No.2286 by deed No.1-50 dated 14.01.2009 to the present appellant.

Further according to the appellant, said Suniti Majumder got the said quantum of land from Nirmala Majumder, wife of Jyotindra Kumar Majumder on the basis of registered a deed of Will (**Exbt. B series**) executed by Nirmala Majumder in favour of her younger daughter Suniti Majumder land measuring 26 decimals from C.S. Plot No.2286 of Khatian No.494, land measuring 47 decimals of Plot No.2105 and land measuring 88 decimals of present C.S. Plot No.1906 of Khatian No.446 in two different moujas. According to the appellant, said 26 decimals of land bequeathed to Suniti Majumder by her mother Nirmala

Majumder which attracts the suit land and the same was under her possession and after that transfer, the same is presently under occupation and possession of the present appellant herein.

It was the further case of the present appellant that said land was recorded in the name of Nirmala Majumder and later on, the same was recorded in the name of Suniti Majumder in Khatian No.494 under Mouja and T.K. Sarashima vide M.R. Case No.250/04, from which it appears that the present C.S. Plot No.2286 land measuring 0.26 acres was recorded in the name of Suniti Majumder. In the alleged Will, Old C.S. Plot No.1292 was not mentioned even in the deed of the present appellant (**Exbt.5**), Old C.S. Plot No.1292 was not reflected. In this regard, there was no explanation from the side of the appellant.

Similarly, in the deed of respondent No.1, the present C.S. Plot No.2286 was not mentioned which she purchased from Chandana Bala Roy.

13. It is the settled position of law that Khatian does not confer the title. If a particular land is not recorded in the name of original 'Rayat', it cannot be said that the 'Rayat' is not the owner of the land as Khatian does not confer any title. Learned Trial Court below, on the basis of materials on record, decreed the suit in favour of the respondent No.1 which was confirmed by Learned First Appellate Court. Now

after hearing arguments of both the sides, we are to examine the following two points for determination of this appeal:

i) Whether the suit of the plaintiff was barred by the law of limitation? and

ii) whether the suit was barred by the provisions of Section 34 and Section 31 of SR Act for not making any specific relief for cancellation of instrument?

14. As already stated, at the time of admission two substantial questions of law were formulated by order dated 27.03.2023 because in course of hearing of argument, Learned Senior Counsel for the appellant rests his submission covering the aforesaid points. Now, after going through the records of the Learned Court below, it appears that the original suit T.S.34 of 2009 was filed by the respondent No.1 as plaintiff on 19.06.2009 before the Learned Trial Court, wherein in the relief portion, the present respondent No.1 specifically sought relief for declaring the deed of the year 2009, executed by Suniti Majumder in favour of the appellant herein to be void in addition to other reliefs. Meaning thereby, the plaintiff i.e. the respondent No.1 herein had clear knowledge about the execution of deed by Suniti Majumder in favour of the present appellant herein, at the time of filing of the said suit before the Learned Trial Court. Thereafter, the said suit was withdrawn from the said Trial Court vide order dated 29.02.2012 and after that the

plaintiff on the basis of leave granted by the Court filed the second suit bearing No.T.S.24 of 2012 on 23.05.2012 mentioning the same grounds. The deed of the appellant was executed by Suniti Majumder in favour of Uttam Kumar Roy i.e. the appellant (**Exbt.5**) on 14.01.2009 and the suit of the respondent No.1 was filed on 19.06.2009 that was within the period of limitation as per Article 59 of the Limitation Act (Part-IV). So, it is clear that the said suit was filed within the period of limitation. Thereafter, the subsequent suit was filed on 23.05.2012 which was numbered as T.S. 24 of 2012. In this regard, I would like to refer herein below the relevant provision of Section 14(3) of the Limitation Act which provides as under:

Section 14(3) in The Limitation Act, 1963:-

14.(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under Rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.

Explanation.—For the purposes of this section,—

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.

15. The appellant of the present appeal did not file any counter-claim, nor did he make any prayer for cancellation of the instrument of the respondent No.1 herein, by way of filing counter-claim. So, the submission of Learned Counsel was that the suit was barred by the law of limitation cannot be accepted as because in both the plaints, same relief was sought for, in the earlier plaint, the respondent No.1 sought for cancellation of the instrument and in the subsequent plaint of T.S.24 of 2012, similar relief was sought for although in the prayer portion may be due to some typing error, it was not specifically stated but the in the Cause Title, it was specifically asserted by the respondent No.1, even the respondent No.1 as plaintiff in the original suit, in her cross-examination specifically stated that as her brother-in-law fraudulently purchased the portion of land purchased by her, so, she filed a case for cancellation of the sale deed. So, for want of clerical error/mistake, it cannot be said that the suit was barred by the law of limitation and also no relief under Section 31 of the SR Act was sought for in filing the suit under Section 34 of the SR Act. In this regard, I would like to refer herein below the relevant provisions of Sections 31 and 34 of the SR Act:

Section 31 of the Specific Relief Act:

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 will also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.

Section 34 of the Specific Relief Act:

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 someone who is not in existence, and for whom, if in existence, he would be a trustee."

16. From the aforesaid provisions also it is very much clear that in the original plaint (T.S. 34 of 2009) and in the subsequent plaint i.e. T.S. 24 of 2012, the respondent No.1 as plaintiff sought for the same relief. There is no ambiguity on that and since the first suit was withdrawn with liberty to file a fresh suit and the leave was granted by the Court by order dated 29.02.2012, so, the suit of the respondent No.1 herein was protected in view of the provision under Section 14(3) of the Limitation Act. More so, in determining the

matters in controversy, I have also taken assistance of ChatGpt raising the following query:

"When a suit is withdrawn with leave of the Court to file a fresh suit, then what would be the period of limitation for filing the subsequent suit?

--When a suit is withdrawn with the leave of the Court to file a fresh suit, the period of limitation for filing the subsequent suit is governed by Section 14 of the Indian Limitation Act, 1963.

Under Section 14, the time during which the first suit was pending will be excluded from the period of limitation for the subsequent suit. This is provided that the first suit was filed in good faith and prosecuted with due diligence.

To put it simply:

- **If you withdraw a suit with the Court's permission to file a new one, the time spent in prosecuting the original suit is not counted against the limitation period for the subsequent suit.**
- **The limitation period for the subsequent suit will be the original limitation period minus the time that the first suit was pending in court.**

Here is the relevant excerpt from Section 14 of the Limitation Act, 1963:

Exclusion of time of proceeding bona fide in court without jurisdiction.

(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant, shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

Therefore, as long as the initial suit was prosecuted in good faith and with due diligence, and it relates to the same matter, the time spent on it can be excluded, effectively extending the limitation period for filing the subsequent suit."

It appears that both the suits filed by the respondent No.1 as plaintiff were of the same nature. The first suit was withdrawn on the ground that in the plaint, in

place of gift deed, deed of purchase was written on the basis of which the predecessor of the respondent No.1, Arati Bala Roy got the suit land along with other lands from Nirmala Majumder and that mistake was bonafied one, so, after hearing both the sides, it appears to this Court that the suit of the respondent No.1 filed before the Learned Trial Court below was not barred by the law of limitation and the same was also not barred in view of the provision provided under Section 34 read with Section 31 of the Specific Relief Act, rather his right was also protected under Section 48 of T.P. Act.

17. Learned Senior Counsel for the appellant in course of hearing of argument relied upon few citations:

In **State Bank of India & Ors. v. S. N. Goyal** dated 02.05.2008 reported in **(2008) 8 SCC 92**, wherein in para No.13 Hon'ble Apex Court observed as under:

"What is a substantial question of law?"

13. Second appeals would lie in cases which involve substantial questions of law. The word "substantial" prefixed to "question of law" does not refer to the stakes involved in the case, nor intended to refer only to questions of law of general importance, but refers to impact or effect of the question of law on the decision in the /is between the parties. "Substantial question of law" means not only substantial questions of law of general importance, but also substantial question of law arising in a case as between the parties. In the context of Section 100 CPC, any question of law which affects the final decision in a case is a substantial question of law as between the parties. A question of law which arises incidentally or collaterally, having no bearing on the final outcome, will not be a substantial question of law. Where there is

a clear and settled enunciation on a question of law, by this Court or by the High Court concerned, it cannot be said that the case involves a substantial question of law. It is said that a substantial question of law arises when a question of law, which is not finally settled by this Court (or by the High Court concerned so far as the State is concerned), arises for consideration in the case. But this statement has to be understood in the correct perspective. Where there is a clear enunciation of law and the lower court has followed or rightly applied such clear enunciation of law, obviously the case will not be considered as giving rise to a substantial question of law, even if the question of law may be one of general importance. On the other hand, if there is a clear enunciation of law by this Court (or by the High Court concerned), but the lower court had ignored or misinterpreted or misapplied the same, and correct application of the law as declared or enunciated by this Court (or the High Court concerned) would have led to a different decision, the appeal would involve a substantial question of law as between the parties. Even where there is an enunciation of law by this Court (or the High Court concerned) and the same has been followed by the lower court, if the appellant is able to persuade the High Court that the enunciated legal position needs reconsideration, alteration, modification or clarification or that there is a need to resolve an apparent conflict between two viewpoints, it can be said that a substantial question of law arises for consideration. There cannot, therefore, be a straitjacket definition as to when a substantial question of law arises in a case. Be that as it may."

In **Ram Saran and Anr. v. Smt. Ganga Devi**

dated 17.04.1972 reported in **(1973) 2 SCC 60**, wherein in para No.4 Hon'ble Apex Court observed as under:

"4. We are in agreement with the High Court that the suit is hit by Section 42 of the Specific Relief Act. As found by the fact-finding courts, Ganga Devi is in possession of some of the suit properties. The plaintiffs have not sought possession of those properties. They merely claimed a declaration that they are the owners of the suit properties. Hence the suit is not maintainable. In these circumstances, it is not necessary to go into the other contention that the suit is barred by limitation."

In **Jaswant Singh & Ors. v. Union Territory of Chandigarh** dated 08.09.1992 reported in **1993 Supp. (2) SCC 122**, wherein in para Nos.13 and 14 Hon'ble Apex Court observed as under:

"13. Section 122 relates to adjudication of confiscations and penalties. Section 124 requires issue of show-cause notice before confiscation of goods or imposition of penalty, which was waived by the appellants in the present case when they accepted the laboratory test reports and agreed to the adjudication proceedings contemplated under Section 122. Section 125 provides for option to pay fine in lieu of confiscation which was resorted to in the present case accepting the appellants' prayer to release the goods to them on their agreeing to adjudication proceedings. These provisions were clearly attracted in the case of these imported goods and that is what the appellants agreed to expressly when they agreed to adjudication and prayed for delivery of the imported goods to them in lieu of confiscation. In addition to the liability for penalty under Section 112 of the Act, the appellants were liable also to pay fine in lieu of the confiscation of the imported goods at the request of the appellants. There is no dispute raised about the quantum of the fine which does not, therefore, require any consideration.

14. The above discussion makes it clear that the misdeclaration of the goods imported by the appellants rendered it liable to confiscation under Section 111(m) and attracted Section 112 for imposition of penalty for improper importation of goods on the appellants on adjudication made under Section 122 giving the appellants option to pay fine in lieu of confiscation, to which they readily agreed accepting the laboratory test reports which proved the misdeclaration of the imported goods and attracted these provisions for adjudication of confiscation and penalty. There is no infirmity in the Tribunal's order."

In **Union of India v. Ibrahim Uddin and Anr.** dated 17.07.2012 reported in **(2012) 8 SCC 148**, wherein

in para Nos.55, 56, 57 and 58 Hon'ble Apex Court observed as under:

"Section 34 of the Specific Relief Act, 1963

55. The section provides that courts have discretion as to declaration of status or right, however, it carves out an exception that a court shall not make any such declaration of status or right where the complainant, being able to seek further relief than a mere declaration of title, omits to do so.

56. In *Ram Saran v. Ganga Devi*:(1973) 2 SCC 60, this Court had categorically held that the suit seeking for declaration of title of ownership but where possession is not sought, is hit by the proviso of Section 34 of the Specific Relief Act, 1963 (hereinafter called "the Specific Relief Act") and, thus, not maintainable. In *Vinay Krishna v. Keshav Chandra*:1993 Supp.(3) SCC 129 this Court dealt with a similar issue where the plaintiff was not in exclusive possession of property and had filed a suit seeking declaration of title of ownership. Similar view has been reiterated observing that the suit was not maintainable, if barred by the proviso to Section 34 of the Specific Relief Act. (See also *Gian Kaur v. Raghubir Singh*:(2011) 4 SCC 567.)

57. In view of the above, the law becomes crystal clear that it is not permissible to claim the relief of declaration without seeking consequential relief.

58. In the instant case, the suit for declaration of title of ownership had been filed, though Respondent 1-plaintiff was admittedly not in possession of the suit property. Thus, the suit was barred by the provisions of Section 34 of the Specific Relief Act and, therefore, ought to have been dismissed solely on this ground. The High Court though framed a substantial question on this point but for unknown reasons did not consider it proper to decide the same."

18. Referring the said citations, Learned Senior Counsel for the appellant submitted that every interpretation of instrument is also a substantial question of law. So, the

plea of the respondent No.1 that no substantial question of law could be formulated in this appeal is not tenable in the eye of law and further submitted that the respondent No.1 as plaintiff did not submit any prayer for cancellation of Will and furthermore, according to Learned Senior Counsel for the appellant, Court also cannot travel beyond the relief sought for. So, Learned Senior Counsel, finally, urged for allowing this appeal by setting aside the judgment of the Learned First Appellate Court. He further referred the provision of Section 27 of the Limitation Act and submitted that since the suit was barred by law of limitation, so, the right of the respondent No.1 over the suit land has been thus extinguished and both the Learned Courts below committed error in appreciating the legal position and gave an erroneous finding for which the judgment and decree of the Learned First Appellate Court has become perverse. On the other hand, Learned Senior Counsel for the respondent No.1, in support of his contention referred one judgment of the Hon'ble Supreme Court in in **Kshitish Chandra Purkait v. Santosh Kumar Purkait and Ors.** dated 07.05.1997 reported in **(1997) 5 SCC 438**, wherein in para No.9 Hon'ble Apex Court observed as under:

"9. Delivering the judgment of a two-member Bench in *Panchugopal Barua v. Umesh Chandra Goswami*:(1997) 4 SCC 713 one of us (Dr Anand, J.) in his judgment dated 12-02-1997 has lucidly explained the scope of Section 100 CPC as amended, thus: (SCC pp.719-20, paras 7 and 8)

"7. A bare look at Section 100 CPC shows that the jurisdiction of the High Court to entertain a second appeal after the 1976 Amendment is confined only to such appeals as involve a *substantial question of law*, specifically set out in the memorandum of appeal and formulated by the High Court. Of course, the proviso to the section shows that nothing shall be deemed to take away or abridge the power of the court to hear, *for reasons to be recorded*, the appeal on any other substantial question of law, not formulated by it, if the court is satisfied that the case involves such a question. The proviso presupposes that the court shall indicate in its order the substantial question of law which it proposes to decide even if such substantial question of law was not earlier formulated by it. *The existence of a 'substantial question of law' is thus, the sine qua non for the exercise of the jurisdiction under the amended provisions of Section 100 CPC.*

8. Generally speaking, an appellant is not to be allowed to set up a new case in second appeal or raise a new issue (otherwise than a jurisdictional one), not supported by the pleadings or evidence on the record and unless the appeal involves a substantial question of law, a second appeal shall not lie to the High Court under the amended provisions. In the present case, no such question of law was formulated in the memorandum of appeal in the High Court and Grounds (6) and (7) in the memorandum of the second appeal only which reliance is placed did not formulate any substantial question of law. The learned single Judge of the High Court also, as it transpires from a perusal of the judgment under appeal, *did not formulate any substantial question of law in the appeal and dealt with the second appeal, not on any substantial question of law, but treating it as if it was a first appeal*, as of right, against the judgment and decree of the subordinate Court. The intendment of the legislature in amending Section 100 CPC was, thus, respected in its breach. Both the trial court and the lower appellate court had decided the cases only on questions of fact, on the basis of the pleading and the evidence led by the parties before the Trial Court. No pure question of law nor even a mixed question of law and fact was urged before the trial court or the first appellate court by the respondent. The High Court was,

therefore, not justified in entertaining the second appeal on an altogether new point, neither pleaded nor canvassed in the subordinate courts and that too by overlooking the changes brought about in Section 100 CPC by the Amendment Act of 1976 without even indicating *that substantial question* of law was required to be resolved in the second appeal. To say the least, the approach of the High Court was not proper. It is the obligation of the courts of law to further the clear intendments legislature and not to frustrate it by ignoring the same." (emphasis supplied)

The above statement of law has our respectful concurrence.

Referring the same, Learned Senior Counsel drawn the attention of the Court, since the appeal does not involve any substantial question of law, so, there is no scope to entertain this present appeal and prayed for dismissal of this appeal with costs.

19. After hearing both the sides and also after going through the principles of law laid down by the Hon'ble Supreme Court in the afore noted cases and also after going through the record of the Learned Court below, it appears that the present appellant has failed to make out any substantial question of law to be formulated in this appeal. So, this appeal deserves no consideration and accordingly, the same is liable to be dismissed with costs.

20. In the result, the appeal filed by the appellants stands dismissed being devoid of merit with costs. The judgment of the Learned District Judge, South Tripura,

Belonia in connection with case No.Title Appeal No.16 of 2019 dated 16.08.2022 and decree dated 17.08.2022 is hereby confirmed and accordingly, it is upheld.

Send down the LCRs along with a copy of the judgment.

Prepare decree accordingly.

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

JUDGE



MOUMITA DATTA

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Date: 2024.08.07 15:34:55 +05'30'

Purnita