

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment pronounced on: 6th April, 2015

+ **I.A. No.17994/2012 & I.A. No.7950/2014 in CS(OS) 873/2012**

SARANPAL KAUR ANAND

..... Plaintiff

Through Mr.Chetan Sharma, Sr.
Adv. with Mr.D.C.Pandey
& Mr.Upin P. Singh,
Advs.

versus

PRADUMAN SINGH CHANDHOK & ORS

..... Defendants

Through Mr.Anil Sapra, Sr.Adv.
with Mr.Rakesh Malhotra
for D-1 & 2.
Mr.Jagjit Singh, Adv. for
D-4 & 5.

CORAM:

HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The plaintiff has filed the present suit against nine defendants. The plaintiff is unmarried daughter of Late Sardar Harnam Singh Anand and Late Smt. Harbans Kaur seeking *inter-alia* the following prayer :

- a) Pass a decree of declaration that the suit property being property No.4-C/7, New Rohtak Road, New Delhi is the joint undivided family property of the plaintiff and defendants No.3 to

9 belonging to and being the successors of Late Sardar Harnam Singh and Smt Harbans Kaur and that defendants No.1 & 2 have no right/interest/title upon or to the said property and;

- b) Grant a decree of declaration whereby declaring purported sale deed dated 23rd August, 1969 alleged to have been executed by Smt.Harbans Kaur through her alleged attorney in favour of Mrs. Tej Kaur as fictitious, sham, incompetent, bad,' illegal, nullity and void ab initio in law. Orders be passed for cancellation of alleged sale deed and;
- c) Grant a decree of declaration whereby declaring the purported sale deed dated 12th October, 1995 by Smt Tej Kaur in favour of defendant No.2 as fictitious, sham, incompetent, bad, illegal, nullity and void ab initio in law; and
- d) Pass a decree of permanent injunction restraining the defendants. No.1 and 2, their agents, nominees, successors, assigns, representatives etc. from raising construction/additions/ alteration, entering into any agreement to sell, creating any third party rights interest, claims, or partying with possession thereof in respect of any portion of the suit property comprising of 2 ½ storey residential building constructed on Plot No.4-C/7, New Rohtak Road, New Delhi and;
- e) Conduct an inquiry to determine the amount of damages/ mesne profits payable and admissible for usage of suit property from date of its use to date of delivery of vacant peaceful

possession thereof unto the plaintiff and plaintiff shall pay necessary Court fee on quantification of the amount pursuant to the inquiry; and

- f) Permit the plaintiff to add/amend and claim further and additional relief under Order 2 Rule 2 of CPC.
- g) Award cost of the suit in favour of the plaintiffs and against the defendants; and
- h) Pass such further order or orders as this Hon'ble Court may deem fit and proper and in interest of justice.

2. The defendant Nos.3 to 5 and 9 and the plaintiff are the real brother and sisters and sons/daughters of Late Sardar Harnam Singh Anand and Late Smt. Harbans Kaur who died on 23rd September, 1974 and 6th August, 2005 respectively. The defendant No.1 is the real brother of Late Smt. Harbans Kaur and maternal uncle of the plaintiff and defendant No.3 to 5 & 9. The defendant No.2 is the son of defendant No.1 and is maternal brother of the plaintiff and defendants No.3 to 5 and 9. The defendant No.6 is the wife of late Shri Kultaran Singh/brother of plaintiff and the defendants No.7 & 8 are the sons of defendant No.6 and Late Shri Kultaran Singh who died in the year 2003 in Iran.

3. Brief facts of the case as per plaint are :

- i) Late Sardar Harnam Singh Anand prior to and at the time of his sad demise on 23rd September, 1974 was having various successful and prosperous Joint Hindu Family business and establishments both in India and in Iran and had purchased various properties including in the name of his wife Smt. Harbans

Kaur in India. Plaintiff and the defendants No.3 to 9 being successors-in-interest were entitled to their respective shares therein under the law of succession. The plaintiff and the defendants No.3 to 5 and 9 including Late Sh. Kultaran Singh were quite of young age and along with their mother late Smt. Harbans Kaur were not able to manage/supervise and monitor the business and properties left behind by Late Sardar Harnam Singh Anand. There were various eviction petitions pending in respect to the suit property in the Competent Court at Delhi.

- ii) Father of Smt. Harbans Kaur (who the eldest in her family) demised when she was only 8 years old and the defendant No.1 and his mother Smt. Tej Kaur did not have sufficient means to sustain and maintain themselves. Smt. Harbans Kaur was married to late Sardar Harnam Singh at the age of 16 years .and thereafter both Sardar Harnam Singh and Smt. Harbans Kaur did everything possible to maintain her mother Smt. Tej Kaur and the defendant No.1. Some portions of the suit property already under tenancy was vacated from some of the erstwhile tenants after paying consideration and after due negotiation and Smt. Tej Kaur and defendant No.1 along with their family was permitted to use and occupy the same by way of permissive use during the life time of Smt. Tej Kaur and/or till they made alternative arrangements. Likewise defendant No.1 was employed by the parents of the plaintiff to look after/supervise the business and properties of the parents of the plaintiff in India and at Iran who reposed full faith, trust, confidence upon him in all respects.

- iii) After the death of Sardar Harnam Singh Anand, Smt. Harbans Kaur on account of the faith and trust reposed upon the defendant No.1 and also on account of the fact that her children were too young to manage/look after the business affairs/court cases depended upon the defendant No.1 for all her decision making. The defendant No.1 as the trustee/guardian was in a fiduciary position and obliged to protect/preserve, the business and family properties of Sardar Harnam Singh Anand and Smt. Harbans Kaur. In the garb of taking steps for managing the business and properties and prosecuting the court cases (eviction petitions) he managed to induce Smt. Harbans Kaur to sign various blank papers/documents under misrepresentations which have been misused to usurp and make all possible benefits by grabbing the properties which belonged to the family of the plaintiff and defendant No.3 to 9.
- iv) It is only after the death of Smt. Harbans Kaur that the plaintiff and defendants Nos.3 to 9 were looking to take over the properties/business of their family that they came across various fraudulent transactions indulged into by the defendant No.1 in joint concert and active connivance with his mother Late Smt. Tej Kaur and the defendant No.2 including creating documents purporting to be Sale Deed dated 23rd August, 1969 which got registered on 27th August, 1969. The same was never disclosed at any point of time to the late parents of the plaintiff and defendant Nos.3 to 9. The consideration mentioned also was never paid nor the defendant No.1 or even his late mother Smt. Tej Kaur had any

means to pay. The defendant No.1 further created the sham, fictitious, *non-est*, illegal documents purporting to be Sale Deed dated 12th October, 1995 alleging claimed to have been executed by Late Smt. Tej Kaur in favour of the defendant No.2. The defendant No.1 as Power of Attorney Holder to Late Smt. Tej Kaur and also of the defendant No.2 sought to file the CM No.5848 of 2008 in CM (Main) No.982 of 2004 seeking to bring on record the defendant No.2 as LR of late Smt. Tej Kaur on the basis of purported Will dated 24th July, 2007 alleged to have been executed by Late Smt. Tej Kaur bequeathing the suit property in favour of the defendant No.2 thereby playing fraud upon by concealing the self-serving documents and now being claimed the purported Sale Deed dated 12th October, 1995 to have been executed in favour of the defendant No.2 by Late Smt. Tej Kaur. The number of frauds played by the defendant No.1 in the case of the properties/business of the plaintiff and the defendant No.3 to 9 are apparent. The receipts of the purported self-claimed transaction are not reflecting and the same are fictitious and *non-est* transactions conferring no rights, interest or title upon the defendants No.1 and 2 in any manner. The documents allegedly got signed by the defendant No.1 from the plaintiff and defendant No.3 to 5 and 9 for the purposes of eviction proceedings have been fabricated and misused in order to grab the properties of the plaintiff and defendant No.3 to 9.

4. The defendant Nos.1 and 2 have filed their written statements who have denied all the averments made in the plaint. It is stated by

them that the suit is not maintainable as it is barred by limitation. As there is no cause of action against the said defendant Nos.1 and 2, the suit is apparently barred by time and the same is liable to be dismissed.

5. From the plaint, it is evident that the plaintiff admittedly has sought the relief of declaration qua the registered sale deed executed by Harbans Kaur - deceased mother of the plaintiff on 23rd August, 1969 in favour of Tej Kaur further the registered sale deed dated 12th October, 1995 was executed by Tej Kaur (maternal grand mother of plaintiff) in favour of the defendant No.2.

The present suit has been filed in March 2012 after a period of around 43 years after execution of sale deed in the year 1969 by the mother of plaintiff in favour of Tej Kaur. However, the plaintiff in para 12 of the suit has averred that the plaintiff now has learnt recently about the sale deed executed by her mother on 23rd August, 1969, who has further claimed that cause of action arose on 10th October, 2008 and 24th October, 2008 when the plaintiff called upon the defendant No.1 and 2 to admit and acknowledge the right of the plaintiff and it also claimed to be arisen on September, 2011 to October, 2011 when plaintiff again called upon the defendant to admit or deny the right of the plaintiff qua the suit property.

6. After filing the suit, the plaintiff's application for an amendment of plaint is also pending being I.A. No.17994/2012, it is alleged in the application that the plaintiff having inadvertently omitted to claim the relief of possession in the prayer clause despite having pleaded and set-forth foundational pleadings with regard to her claim for possession

in para No.31 and having paid requisite court fees for the relief of possession, as per Para No.37 of the plaint. In view of the said lapse the plaintiff was constrained to file an application under Order 6 Rule 17 read with Section 151 of CPC seeking to incorporate the prayer qua the relief of possession registered.

7. When the matter was listed before Court for further proceedings, on 7th February, 2014 the following order was passed by this Court :

“A prima facie perusal of the plaint and especially the cause of action clause, in the light of the relief claimed by the plaintiff, shows that the suit is hopelessly barred by time. Accordingly, the following preliminary issue is framed :

(I) Whether the suit as framed is liable to be rejected under Order VII Rule 11 (d) of the CPC on the ground of limitation ? OPD”

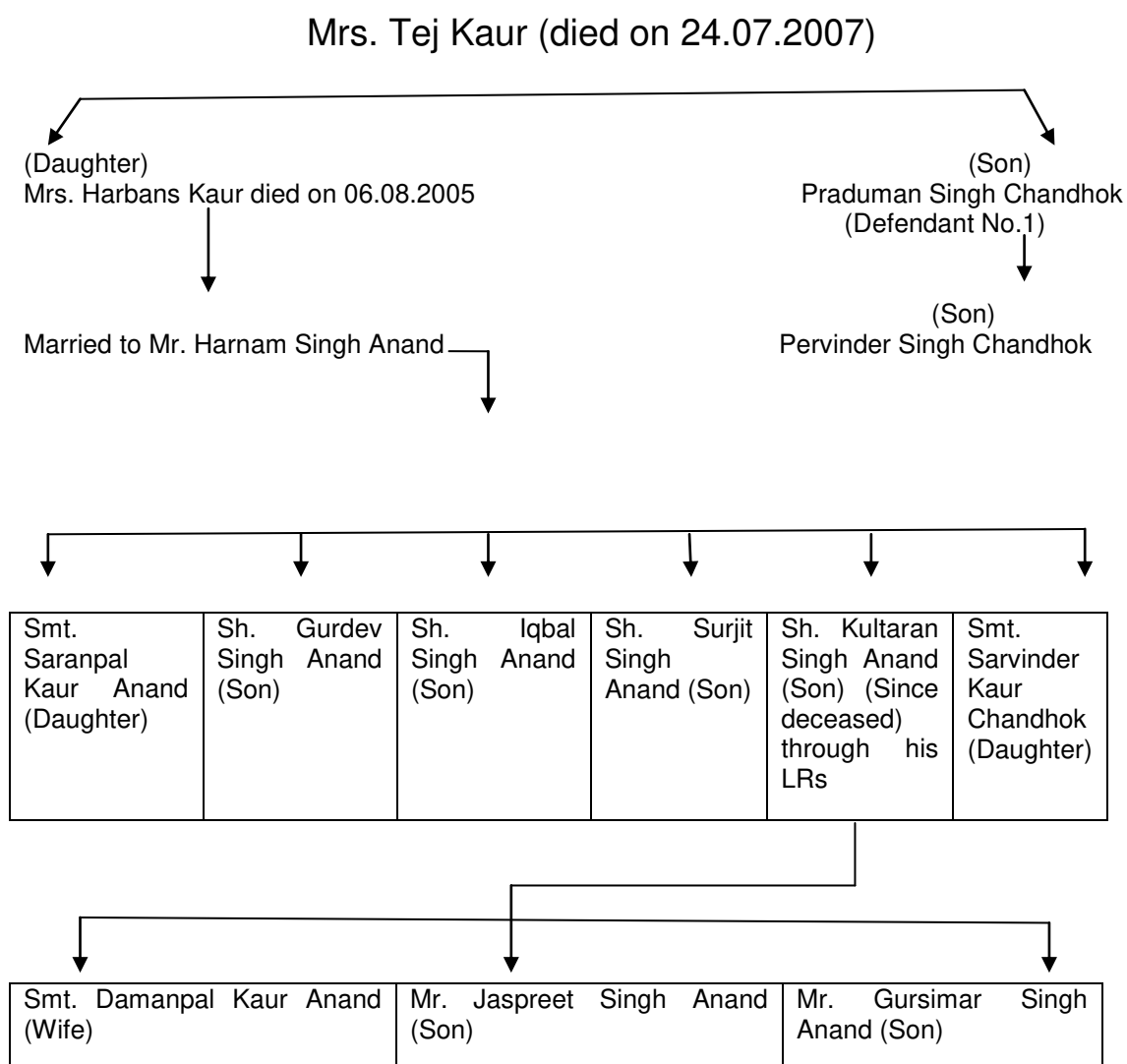
8. Before the hearing of said issue framed by the Court, the plaintiff filed another application for amendment of plaint being I.A. No.7950/2014. It is stated in the application by the plaintiff that in order to elaborate and detail the cause of action, the facts in the plaint could not be detailed in the cause of action clause, as per para 33. The abovementioned second application for amendment of plaint has been filed by the plaintiff after passing of the order dated 7th February, 2014 passed by this Court. Notice has not been issued in the second application for amendment to the defendant Nos.1 and 2, however the arguments were addressed on the behalf of the said defendants.

9. The prayer of the second application for amendment is also opposed by the defendant Nos. 1 and 2 who stated that the amendment sought is not a subsequent fact which has been arisen

after filing of the suit rather the purpose of seeking amendment at this stage is covering the lacunas only and this has been moved when this Court on the basis of pleading was pleased to frame the preliminary issue with respect to the limitation issue. The amendment is sought in order to avoid hearing of issue framed by the Court. It is submitted on behalf of defendant Nos.1 and 2 that if this unwarranted amendment is allowed then there would open endless procedure for completion of pleading which will not be in interest of justice and the plaintiff cannot now be allowed to improve her case or to fill lacuna and this relief which is well in the knowledge of the plaintiff and at this stage this amendment cannot be allowed. The application is nothing but an abuse of process of law, which is filed with malafide intention.

10. Mr. Chetan Sharma, learned Senior counsel appearing on behalf of plaintiff has pressed that firstly the plaintiff's two pending applications for amendment be decided by this Court, thereafter issue of limitation may be considered. The said request is opposed by counsel for defendant Nos.1 and 2 who submitted that if on the basis of material placed on record that the suit is apparently time barred then there is no need to decide the said applications. After some discussion, both parties are agreeable to make their submissions in the pending amendment applications as well as issue of limitation which was framed by order dated 7th February, 2014. Accordingly arguments were advanced by both sides.

11. In order to understand the relationship between the parties it is necessary to extract the flow chart hereunder :



12. It is argued by Mr. Sharma, learned Senior counsel that the admitted position borne from the eviction proceedings are that till the year 1982 the purported sale of the suit property was never completed and nothing has been placed on record to prove the completion of the alleged sale till date in any of the proceedings. The said fact is duly substantiated from the fact that in the year 1973 the eviction proceedings for the suit property was initiated by Smt. Harbans Kaur and not Tej Kaur.

13. His main argument is that all the fraud committed by the defendant No.1 and 2 and late Smt. Tej Kaur came to the knowledge of the plaintiff just prior to the filing of suit, thus, the suit is not barred by limitation. Even if the fraud has been played upon the plaintiff, there is no period of limitation. Thus, at this stage, it is not necessary to reject the plaint. The issue in question is a mixed question of law and facts, the same requires trial. It would be appropriate if the hearing on this issue be postponed.

14. Before deciding the rival submissions of both parties, few relevant dates and events happened between the parties as per their pleadings are referred as under :

- i) On 20th January, 1958, the suit property bearing No.4C/7, New Rohtak Road, New Delhi from Shri Ram Rattan, S/o. Pt. Ram Kishan vide registered Sale Deed dated 20th January, 1958 registered as No.315 Additional Book No.1, Volume No.406 on page 43 to 50 on 17th February, 1958 with the officer of sub-registrar in the name of Smt. Harbans Kaur. The property was under tenancy of tenants.
- ii) On 23rd August, 1969, Smt. Harbans Kaur through her attorney sold the property bearing No.4C/7 New Rohtak Road by way of registered sale deed in favour of Tej Kaur.
- iii) On 23rd November, 1970 and 10th December, 1970 a demand notice addressed to Mrs. Tej Kaur by MCD and representation submitted by Mrs. Tej Kaur with MCD.
- iv) On 21st September, 1971 the notice was issued to the tenant of the subject property on behalf of Ms. Harbans Kaur wherein the

factum of the sale of the subject property in the name of Tej Kaur was brought to the notice of the tenant and responded by tenant on 5th October, 1971.

- v) On 25th April, 1973 plaintiff Mrs. Saranpal Kaur attained the age of 18 years.
- vi) In the year 1974 Sardar Harnam Singh Anand father of plaintiff expired.
- vii) On 17th January, 1976 Succession certificate was obtained by Mrs. Harbans Kaur qua the estate left by Mr. Harnam Singh Anand bearing No.722/74.
- viii) On 19th April, 1980 a letter was written to DDA for mutation of the subject property in the name of Mrs. Tej Kaur on behalf of Ms. Harbans Kaur.
- ix) On 3rd May, 1982 Eviction petition filed by Mrs. Tej Kaur against the tenant wherein Mrs. Harbans Kaur was impleaded as respondent No.3 (performa party) as a erstwhile owner.
- x) On 25th May, 1982 Notice qua the eviction proceedings titled as Tej Kaur vs. K.S. Gupta was served to Mrs. Harbans Kaur as a performa respondent being predecessor interest and this notice was served on 59/7, New Rohtak Road, Karol Bagh, New Delhi where she was residing.
- xi) On 23rd August, 1982 Mutation of the subject property was executed with the office of Tehsildar with the name of Mrs. Tej Kaur.

- xii) On 12th October, 1995 Mrs. Tej Kaur sold suit property by executing a registered sale deed in favour of Mr. Pervinder Singh Chandhok, defendant No.2.
- xiii) On 6th August, 2005 Mrs. Harbans Kaur expired.
- xiv) On 28th October, 2006 Defendant No.3 being one of the LR of Mrs. Harbans Kaur refused to accepted the summons to be served by Bailiff of High Court in CM Main No.982/2004 titled as K.S. Gupta (Chander Kala Ors. vs. Mrs. Tej Kaur and finally on 10th May, 2007 they all were served by way of publication.

Plaintiff as well as her family members moved an application in the said eviction case pending before this Court wherein the factum of selling the property and the title in favour of defendant No.2 was available on the record of the said case.

- xv) On 24th July, 2007 Mrs. Tej Kaur expired.
- xvi) On 16th March, 2008 An application under Order 1 Rule 10 of CPC was moved by the plaintiff and other defendants before the Court of ARC whereby acknowledging the sale of the subject property in favour of Mrs. Tej Kaur and thereafter in favour of defendant No.2. The said application was duly signed by the plaintiff as well as defendant Nos.3 to 5 and 9.
- xvii) In the year 2008 Suit filed by Mr. Jaspreet Singh Anand (defendant No.7) before this Court bearing CS(OS) No.977/2008 for the relief of partition qua the property of Mrs.Harbans Kaur and Mr. Harnam Singh in respect of other immovable properties. The subject property was found not mentioned in the said suit.

xviii) In September, 2008 The counsel of the one of the defendants No.4 and 5 namely Mr. Iqbal Singh Anand and Mr. Surjit Singh Anand brothers of the plaintiff inspected the judicial file of the C.M. Main No.982 of 2004 emanating from eviction petition filed by Mrs. Tej Kaur against one of the tenant of the subject property wherein sale deed was part of that judicial file.

xix) On 10th/24th October, 2008 legal notice issued on behalf of plaintiff through her counsel wherein plaintiff has claimed the right qua the subject property on the basis of one of legal heir of Mrs. Harbans Kaur who predeceased her mother Mrs. Tej Kaur.

xx) Similarly, on 3rd August, 2010 Mr. Gurdev Singh Anand (Defendant No.3) filed suit against the plaintiff and other defendants for the relief of partition with respect to the assets of Mrs. Harbans Kaur and Mr. Harnam Singh and again the subject property was found not mentioned in the said suit.

xxi) On 27th March, 2012 Plaintiff filed the present suit.

15. In ***T.Arivandandam vs. T.V. Satyapal***, (1977) 4 SCC 467, the Supreme Court while dealing with the powers of the Court under Order 7 Rule 11 CPC had noted that where the meaningful reading of the plaint disclosed that the suit which had been filed was in fact vexatious and meritless; it being a case of clever drafting which has created the illusion of a cause of action, it must be nipped in the bud by the Court.

16. It is also settled law that in case the court is doubtful about the issue of limitation or two views are possible, the benefit would go in favour of the plaintiff and the issue of limitation is to be postponed for

determination after trial. However, at the same time, it is also settled law if it is apparent on record from the reading of plaint and documents that the plaint does not disclose cause of action and the suit is evidently barred by law, then the plaint is to be rejected.

17. Reliance is placed on various decisions in view of objection of limitation raised by the defendant Nos. 1 and 2 and to decide the issue framed by the court.

i) In **Abdul Rahim & Ors vs. Abdul Zabbar & Ors.**, (2009) 6 SCC 160 it was held as under:

“28. A suit for cancellation of transaction whether on the ground of being void or voidable would be governed by Article 59 of the Limitation Act. The suit, therefore, should have been filed within a period of three years from the date of knowledge of the fact that the transaction which according to the plaintiff was void or voidable had taken place. The suit having not been filed within a period of three years, the suit has rightly been held to be barred by limitation.”

ii) In the case of **J.D. Jain & Ors vs. Sharma Associates & Ors.**, 167 (2010) DLT 766 it was held as under:

“17. It is evident from the above materials that the plaintiffs were aware and in any event deemed to have been aware of the defendants' possession regarding the suit property and the basis of their claim for possession, *i.e.*, the partnership deed dated 18.11.1987 some time during that year or at best sometime in 1988—at the latest on 30.6.1988 when they filed the suit *i.e.* CS (OS) 194/1988. Articles 58 & 59, of the Schedule, to the Limitation Act prescribe the period of limitation

in respect of the relief of declaration; it is three years from the date of accrual of the cause of action. Even if the Courts have to take a liberal and charitable view about the plaintiffs' knowledge having been acquired after the Suit filed by the defendants, their best case would be awareness sometime in the year 1988. If that were the starting point of the period of limitation, clearly the three year period ends sometime in 1991. That the plaintiffs were pursuing concurrent remedies in respect of the same suit property with this awareness is also evident from the copies of the complaint under Section 145 filed by them. Therefore, the Suit is clearly time barred as far as the relief of declaration claimed is concerned.”

iii) In ***N.V.Srinivasa Murthy & Ors. vs. Mariyamma***, (2005) 5 SCC 548 it was observed that the mutation proceedings in the year 1994 did not give rise to a fresh cause of action as it was only in furtherance to the sale deed dated 5th May, 1953 and it appeared to have been made as a camouflage to get over the bar of limitation. Therefore, the Court had dismissed the suit under Order 7 Rule 11 CPC.

18. It is also settled law that the Court must not refuse bonafide, honest and necessary amendment but at the same time, it is also settled law that the Court should never permit malafide, dishonest and unnecessary amendment which may cause prejudice to the other side which cannot be compensated adequately in terms of money. If plaintiff does not disclose cause of action as per averment made in the plaint and the suit is apparently barred by law, the Court normally should reject the amendment in case a party is trying to introduce different new case and seeking to displace the case of the other side by withdrawing admissions.

- a. *In Muni Lal v. The Oriental Fire & General Insurance Company Ltd. and Anr.*, AIR 1996 SC 642 it was held as under:

“6. On a consideration of this case in its proper perspective, we are of the view that granting of amendment of plaint seeking to introduce alternative relief of mandatory injunction for payment of specified amount is bad in law. The alternative relief was available to be asked for when the suit was filed but not made. He cannot be permitted to amend the plaint after the suit was barred by the limitation during the pendency of the proceeding in the appellate court or the second appellate court. Considered from this perspective, we are of the view of the opinion that the District Court and the High Court were right in refusing the prayer of amendment of the suit and the courts below had not committed any error of law warranting interference.”

- b. The Supreme Court in the case of *Radhika Devi vs. Bajrangi Singh.*, JT 1996 (2) SC 238 held as under:

“The appellant has instituted Partition Suit No.24/88 in the Court of Subordinate Judge, Aurangabad for partition of certain properties. Respondents 16 to 20 herein filed written statement on June 15, 1988 wherein they pleaded that Ramdeo Singh had executed and registered a gift deed in their favour on July 28, 1978 bequeathing the properties covered there under. They became owners of those lands and the appellant is bound by the same. Pending the suit, the appellant filed an application under Order 6 Rule 17, CPC on November 11, 1992 seeking declaration that the gift deed was obtained by the respondents illegally and fraudulently and, therefore, it was ineffective and does not bind the appellant.

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Shri Sanyal, the learned senior counsel for the respondents, contended that the appellants had lost the

right to seek the above declaration as being barred by limitation. The registration of the document is a notice to everyone claiming any right, title and interest therein; even otherwise, the respondents in the written statement filed on June 15, 1988 has specifically pleaded about the gift being made by Ramdeo Singh in their favour. Despite that, the appellant had not taken any steps till November 1992 by which time even the suit for declaration within the limitation of three years from the date of knowledge had got time-barred. Therefore, the appellant is not entitled to amend the plaint which would prejudicially affect the rights of the respondents.”

19. It appears from the relevant dates and events that the present suit has been filed in March 2012 after a period of around 43 years of sale of the suit property challenging the registered sale deed duly executed by the mother of the plaintiff in 1969. The plaintiff's entire family continued to live together at 59/7 New Rohtak Road, New Delhi. Whereas defendants No. 1 and 2 and Mrs. Tej Kaur have continued to enjoy undisturbed possession of the property as their residence owned by them at 4C/7 New Rohtak Road, New Delhi, which is near to the suit property. They are residing there for the last 45 years.

20. It is a matter of record that in the para 17 of the plaint the plaintiff has along with her family members who are the other defendants moved an application in CM Main No.982/2004 as a legal heir of respondent No. 14 therein i.e. Mrs. Harbans Kaur by filing a CM No. 14245/2008 under Order 22 Rule 4 of C.P.C. and thereafter it has been itself admitted by the plaintiff that this Court through its order on 29th September, 2008 was pleased to grant liberty to the plaintiff to claim/raise their rights as and when any subsequent pleading arises,

even despite their previous knowledge of the sale deed, the plaintiff has filed the present suit in March, 2012 after the expiry of three years from the date of knowledge.

21. It is also a matter of fact that after the sale of the suit property, Mrs. Tej Kaur instituted eviction petition before ARC wherein Mrs. Harbans Kaur impleaded as performa party being erstwhile owner and party of predecessor interest. Mrs. Harbans Kaur had accepted summons on 25th May, 1982 at her residential address 59/7 New Rohtak Road thereafter she continued to be on record as a proforma party. Post her death Mr. Gurdev Singh Anand who is her eldest son and is also defendant No.3 refused to accept summons served by the bailiff of this Court on 28th October, 2006 at the same address where the entire family continues to reside till today and he has stated before the bailiff that his mother has passed away and he cannot accept the said summons which has been duly observed by the Court. Subsequent thereto in order to serve them by substituted mode of service, a publication was carried out in the news paper Statesman on 10th May, 2007, meaning thereby at least family members had full knowledge from 10th May, 2007.

22. The plaintiff has also got notices issued through her counsel on 10th October, 2008 and 24th October, 2008 to the defendant Nos.1 and 2, the same are part of the plaint. The contents would show that plaintiff was claiming her right in respect of suit property being LR of Mrs. Tej Kaur, and the plaintiff and family members were in the

knowledge of ownership of suit property being with Mrs. Tej Kaur after the sale by Mrs. Harbans Kaur in 1969.

23. The plaintiff and her family members, despite admitting their own admission in the said notices whereby they acknowledge Mrs. Tej Kaur as the owner of the suit property and claim to demand their share from her estate seeking partition, they have now turned around and claim that suit property was never sold to Mrs. Tej Kaur. From these facts the plaintiff cannot deny that she was not aware about the ownership of Mrs. Tej Kaur. The present suit was filed in March, 2012, at least as per law, it could have been filed within three years from the date of cause of action accrues.

24. It is also a matter of fact that in the said suit plaintiff along with her family members through her attorney has filed the vakalatnama on 16th March, 2008, and moved an application under Order 1 Rule 10 CPC before the Court of ARC, Delhi whereby acknowledging the factum of the sale of the suit property in favour of Mrs. Tej Kaur and thereafter title in favour of defendant No.2. The plaintiff has filed the present suit on the strength that she came to know about the said sale only in 2012. The said fact is apparently not correct. The same is alleged by the plaintiff just in order to avoid the objection of limitation, which on the other hand indicates otherwise.

25. There is no force in the averments made in the plaint pertaining to the suit property in view of another fact that in their own family partition suit filed by Mr. Jaspreet Singh Anand on 18th May, 2008 bearing CS (OS) No.966/2008 against the plaintiff and other defendants with

respect to the assets of their parents Mrs. Harbans Kaur and Mr. Harnam Singh wherein all the properties of both of them are mentioned, no relief qua the suit property has been claimed.

26. Even in subsequent partition suit CS (OS) No.1677/2010 filed by Mr. Gurdev Singh on 3rd August, 2010 against the plaintiff and other defendants with respect to the assets of Mrs. Harbans Kaur and Mr. Harnam Singh wherein all the properties of both of them are mentioned and no relief qua the suit property has been claimed. It is on record that in the said partition suit the plaintiff and her family members claim to file the Suit No. 1677/2010 to cover entire estate of Harnam Singh and Harbans Kaur which was not part of suit No. 966/2008. The suit property is not part of that proceedings meaning thereby they were very well aware that they do not have any kind of right qua the suit property and have instituted malicious prosecution.

27. From these actions and conduct of the plaintiff and her family members, it is clear that the statement made by the plaintiff in March, 2012 that he has now come to knowledge of sale deed by her mother in favour of Tej Kaur is apparently not correct.

28. The above actions on part of the plaintiff and her family members would show that they were having positive knowledge about the sale of the suit property and its changes of hands thereafter qua the title as well as possession of the suit property. They were always aware from the day of sale in 1969; the actions of her mother in her lifetime in decade of 1970, 1980, 1981 and 1982; their own actions/applications

filed/NOCs/Notices issued etc. post death of Harbans Kaur in 2007, 2008, 2009, 2010 and 2011.

29. The suit apparently has been filed after decades after she attained majority. As per her own admission, parties are related to each other and the suit property and where the plaintiff and her family members were residing are nearby.

30. Therefore, the plaint discloses no cause of action and is hopelessly barred by limitation even if the averment made in the application for amendment of plaint are taken into consideration in view of admissions and knowledge of the plaintiff and her family members. The plaint is liable to be rejected under the provisions of Order 7 Rule 11 CPC.

31. It is also argued by Mr. Chetan Sharma, learned Senior counsel, that defendants No.1 and 2 have not paid the entire sale consideration against the purported sale deed dated 27th August, 1969 against receipts/acknowledgements. However, they have failed to place anything on record to show that the remaining payment as stipulated had been paid to late mother, thus, it was a fraudulent transaction having no basis in law and conferring no rights, interest or title in any manner upon the defendants No.1 & 2 or even their late mother Smt. Tej Kaur.

32. Mr. Jagjit Singh, Advocate who is appearing on behalf of defendant Nos.4 and 5 i.e. family members of the plaintiff has also supported the argument of Mr. Chetan Sharma, learned Senior

counsel and has referred the decision of the Supreme Court in the case of ***Kaliaperumal vs. Rajagopal and Anr.***, (2009) 4 SCC 193 para 19 to 21 and 25 which are reproduced as under :

“19. The answer to the question whether the parties intended that transfer of the ownership should be merely by execution and registration of the deed or whether they intended the transfer of the property to take place, only after receipt of the entire consideration, would depend on the intention of the parties. Such intention is primarily to be gathered and determined from the recitals of the sale deed. When the recitals are insufficient or ambiguous the surrounding circumstances and conduct of parties can be looked into for ascertaining the intention, subject to the limitations placed by Section 92 of Evidence Act.

20. In this case, the execution of the sale deed on June 26, 1983 is not in dispute. The said instrument was presented for registration on October 21, 1983 and registered on October 26, 1983, as the first respondent/vendor appeared before the Sub-Registrar and admitted that the vendors had executed the documents, but refused to make an endorsement to that effect on the deed as the vendors had not received the balance consideration of Rs.40,000/-.

21. Applying the above mentioned principles to the facts of this case, we find that the parties intended that ownership of the property would be transferred to the appellant only after receipt of the entire consideration by the vendors, as a condition precedent. The operative portion of the sale deed clearly states that the vendors have agreed to receive Rs.40,000/- in the presence of the Sub- Registrar on the date of the registration of the sale deed and that in consideration of payment to be so made, the property was being conveyed to the purchaser. This makes it clear that the title was intended to pass only on the payment of balance consideration of Rs.40,000/- in the presence of the Sub-

Registrar. This is also supported by the evidence of DW-1 to DW-4. The Sub-Registrar has also clearly recorded that no amount was tendered or paid by the purchaser to the vendors in his presence. Therefore title in fact did not pass either on execution or registration of the sale deed.

25. Therefore, on the facts and in the circumstances of the case, we are of the considered view that the parties really intended that title of ownership to the suit properties would pass to the purchaser, only after payment of full consideration by the purchaser to the vendor as a condition precedent. Parties did not intend that there should be transfer of ownership merely on execution and registration of the deed. The trial court and first appellate court having misinterpreted the legal position, the High Court rightly set aside the decree passed in favour of the appellant and dismissed the suit. No ground is made out by the appellant to interfere with the decision of the High Court. Therefore, the appeal, which is devoid of merits, deserves dismissal.”

33. Mr.Sapra learned counsel appearing on behalf of the defendants No.1 and 2 has refuted the argument who stated the entire payment was made as parties were related to each other, raising of issue after 53 years has even otherwise no consequence in view of death of all relevant persons involved in the transaction. The said plea is time barred.

34. The submission of Mr.Jagjit Singh and Mr.Chetan Sharma have no force. They cannot raise the said plea as the same is also barred by limitation. Under the law of estoppels, the said objection cannot be raised. The said issue of limitation in this regard has been discussed in detail in the two decisions.

35. Mr.Sapra has referred said decisions in support of his submissions:

- i) The first case is of ***Premnarayan and Anr. Vs. Kunwarji and Anr.***, AIR 1993 MP 162 where the entire scheme of Section 54 of the contract of sale has been discussed in para 8 and 9, the same is read as under :

“8. In Afsar Shaikh v. Soleman Bibi, AIR 1976 SC 163 their Lordships have laid down the law in the following terms (at page 169):

"It is not sufficient for a person seeking the relief to show that the relations of the parties have been such that the one naturally relied upon the other for advice, and the other was in a position to dominate the will of the first in giving it. "More than mere influence must be proved so as to render influence in the language of the law, 'undue'." Upon a determination of the issue at the second stage, a third point emerges which is of the "onus probandi". If the transaction appears to be unconscionable, then the burden of proving that it was not induced by undue influence is to lie upon the person who was in a position to dominate the will of the other."

9. In Subhas Chandra Das Mushib v. Ganga Prosod Das Mushib, AIR 1967 SC 878 also their Lordships have mandated the courts scrutinising pleadings to find out if the plea of undue influence had been made out and whether full particulars thereof were given before examining whether undue influence was exercised or not.”

- ii) Same issue has been discussed in the case of ***Delhi Development Authority vs. Skipper Construction Co. (P) Ltd. and Ors.***, AIR 2000 SC 573 wherein in para 29 to 32 it was held as under :

“29. These points depend upon the effect of the provisions in sub-section (6) of Section 55 of the Transfer of Property Act. That section starts with the words: “In the absence of a contract to the contrary”, and reads thus (insofar as it is material for our purpose):

“55. (6)(b) The buyer is entitled—

(a)^{***}

(b) unless he has improperly declined to accept delivery of the property to *acharge* on the property, as against the seller and all persons claiming under him, to the extent of the *seller's interest* in the property, for the amount of *anypurchase-money* property paid by the buyer in anticipation of the delivery and for *interest* on such amount; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission.”

It is plain from the above provision that, in the absence of a contract to the contrary, the buyer will have a charge on the seller's interest in the property which is the subject-matter of the sale agreement insofar as the purchase money and interest on such amount are concerned, unless the buyer has improperly declined to accept delivery. The charge is available against the seller and all persons claiming under him. This charge in favour of the buyer is the converse of the seller's charge under

Section 55(4)(b). The buyer's charge under this section is a statutory charge and differs from a contractual charge which a buyer may be entitled to claim under a separate contract [*M.M.R.M. Chettiar Firm v. S.R.M.S.L. Chettiar Firm*, AIR 1941 PC 47 : 46 CWN 57] . No charge is available unless the agreement is genuine [*Trimbak Narayan Hardas v. Babulal Motaji*, (1973) 2 SCC 154 : AIR 1973 SC 1363] . As pointed out in *Mulla's Commentary on Transfer of Property Act*, 8th Edn. (p. 411), the charge on the property under Section 55(6)(b) is enforceable not only against the seller but against all persons claiming under him. Before the amending Act of 1929, the words "with notice of payment" occurred after the words "all the persons claiming under him". These words were omitted as they allowed a transferee without notice to escape. After the amendment of 1929, notice to the purchaser has now become irrelevant.

30. When the property upon which the charge is created gets converted into another form, the buyer will be entitled to proceed against the substituted security. This is a general principle of law and Section 73 of the Transfer of Property Act is only an example of the said principle. The above principle has been applied to enforce mortgage on substituted securities (see *Barhamdeo Prasad v. Tara Chand* [(1913-14) 41 IA 45 : 12 All LJ 82 : 16 Bom LR 89 : ILR (1914) 41 Cal 654 (PC)] and *Surapudi Muniappa v. Nookala Seshayya Gari Subbaiah* [AIR 1917 Mad 880]). The same principle which is applicable to mortgages applies to cases of statutory charge under Section 55(6)(b). If immovable property is charged and is converted into another property or money, then the charge will fasten on the property or money into which the subject-matter of the agreement is converted.

31. The above sub-section of Section 55 also makes it clear that the buyer is entitled to interest on the amount of purchase money paid. Interest is payable from the date of payment of the purchase money to the seller till the date of delivery of property to the purchaser or till the execution of the sale deed, whichever is earlier. Points 1 and 2 are decided accordingly in favour of the buyers.

32. Article 62 of the Limitation Act, 1963 (which corresponds to Article 132 of the Limitation Act, 1908) provides a period of 12 years “to enforce payment of money secured by a mortgagee or otherwise charged upon immovable property”. Time runs from the date “when money becomes due”.

35. From the above, it is evident that the period of limitation for enforcement of statutory charge created under Section 56(6)(b) is 12 years from the date when it becomes due. In the present case, admittedly the matter of the plaintiff has sold the property to Tej Kaur in the year 1962. The suit was filed in 2012 i.e. after 50 years. The plaintiff became major in April, 1973, the said objection is even raised after 39 years. Thus, it is too late on the face of it to raise such objection. Though the finding arrived in the case of ***Kaliaperumal*** (supra) is legally correct, however the facts and circumstances in the present case are materially different.

36. With regard to the other objection raised by Mr.Chetan Sharma that in case the property was again sold by virtue of registered Will in favour of defendant No.2 filed by the mother of the plaintiff in 1969 in favour of Tej Kaur who subsequently sold to defendant No.2 on 12th October, 1995 why she would after expiry of more than 11 years i.e.

on 4th May, 2007 again sold by virtue of registered Will in favour of defendant No.2 then after the expiry of about 12 years she executed the Will again in favour of defendant No.2. It might be the correct position as raised by the plaintiff but the fact remain that on 12th October, 1995 Tej Kaur has sold the suit property in favour of defendant No.2 by virtue of registered document i.e. sale deed. This fact has not been denied by the plaintiff. In case of registered sale deed executed by Tej Kaur if she has also executed the registered Will bequeathing the same property in favour of defendant after the expiry of 11 years i.e. 2007, the same does not help the case of the plaintiff as far as limitation issue is concerned because the suit would still become time barred from the said date. Even otherwise, it is a matter of fact that the mother of plaintiff has sold the property to Tej Kaur in the year 1969 by virtue of registered sale deed.

37. As a matter of fact, it is evident from the entire gamut of matter that the plaintiff and other family members were aware about the sale of suit property in favour of Tej Kaur and later on defendant No.2 but they did not raise any protest at that time as there was hardly any value of immovable suit property. Due to increase of prices in city after the long period of time, the plaintiff and her family members are not ready to accept the said fact of sale and started raising the objections by filing of suit through plaintiff who no doubt deserves sympathy but the Court has to decide the matter as per law. The Court has no option but to decide the issue. The subsequent sale by Tej Kaur in favour of defendant No.2 has no much bearing although

the suit itself is time barred from the date of Will of Tej Kaur in favour of defendant No.2. Thus, the objection of plaintiff in this regard is not sustainable and the same is rejected.

38. Considering all the previous actions and conduct of plaintiff and her family members, despite of admitting their own admission in the said notices whereby they acknowledge Mrs. Tej Kaur as the owner of the said property and claim to demand their share from her estate seeking partition, they have now turned around and claiming that property was never sold to Mrs. Tej Kaur. It is evident from such actions of plaintiff and her family members not bonafide as they have had full knowledge of the sale deed.

39. The suit is apparently time barred. Hence, the plaint is rejected, the issue framed in the matter is accordingly decided against the plaintiff and in favour of defendant Nos.1 and 2, the amendment applications filed by the plaintiff are malafide and are not maintainable as the same itself is time barred on the face of pleadings and documents placed on record. Both applications are accordingly dismissed.

40. The plaint is rejected. All pending applications are also disposed of consequently.

(MANMOHAN SINGH)
JUDGE

APRIL 06, 2015