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

Judgment reserved on: 24.08.2015

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Judgment delivered on: 11.07.2016

+ **RSA 66/2007**

MOHD. JAMIL & ORS.

..... Appellant

Through: Mr. S.K. Bhaduri, Mr. Kirti Parmar
and Ms. Kanika Mittal, Advocates

versus

MIRAJUDDIN

..... Respondent

Through: Mr. Rahul Srivastava and Mr. Neel
Mani Pant, Advocates

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

J U D G M E N T

VIPIN SANGHI, J.

1. The present second appeal under Section 100 CPC assails the judgment dated 26.10.2006 passed by the First Appellate Court, i.e. learned ADJ Delhi Fast Track Court, New Delhi, whereby the first appeal preferred by the defendant/appellant i.e. RCA No. 22/06/87 under section 96 CPC was dismissed. The said regular first appeal challenged the judgment and decree dated 16.02.1987 passed by the trial court, viz. the Sub Judge 1st Class Delhi, in Suit No. 451/79, decreeing the suit preferred by the plaintiff for declaration and mandatory injunction against the defendants.

2. The plaintiff/respondent-Mirajuddin initiated the suit on the premise that the building bearing municipal House Tax no. IX/436(old) 739(New), situated at Jama Masjid, Delhi (the suit property) was a composite evacuee property. On 24.09.1960 the Competent Officer advertised the public auction of the suit property against reserve price of Rs. 45,000/- in exercise of the powers conferred under the Evacuee Interest (Separation) Act, 1951. The plaintiff Mirajuddin gave the highest bid of Rs. 22,000/-, and he paid 10% of the bid amount. Since the bid amount was below ½ of the Reserve price, the plaintiff was intimated that the matter will be referred to the Custodian of Evacuee Property for acceptance of his bid, and intimation will be sent to him

3. There were two defendants in the suit. They were Mohd. Vakil – defendant No.1 and his wife Fatima Sultan – defendant No.2. The plaintiff stated that the defendants were related to him. The case of plaintiff was that in the middle of October, 1960 the defendants came to meet the plaintiff and his mother and got to know of the above transaction. The defendant No.1 offered to help the plaintiff and stated that he has contacts in the Custodians office and will prevail upon them to get his bid accepted. In November 1960, defendant No.1 informed the plaintiff and his mother that the custodian had agreed to accept the bid, and advised the plaintiff to deposit the balance amount of 19,800/- in cash. Impressed with the efforts of defendant no 1, the plaintiff's mother asked him to collect and deposit the balance amount. Accordingly, the mother of the plaintiff handed over the cash of Rs. 20,000/- to the defendant No.1 for deposit with the custodian. He informed that he had deposited the said amount. After this, the defendant

No.1, on some pretext or the other, claimed that the sale certificate had not been issued. He claimed that the finalization will take a little time, as the office of the Competent Officer had not received the names of the persons in occupation of the suit property either as tenants or as unauthorized persons. It was further averred that because of the doubt which arose due to inordinate delay, plaintiff's mother sent the plaintiff to the office of the Competent Officer to inquire about the actual status regarding the sale certificate, where he was told that the issue of sale certificate is being withheld, as the Custodian of Evacuee Property has not sent the list of occupants of the suit property. After passing of considerable period of time when nothing happened, the plaintiff and his mother got suspicious and requested the defendant no.1 to handover the original receipt of 19,800/-, but he informed that the same had been deposited with the office of the Competent Officer.

4. It was further averred in the plaint that the plaintiff and his mother kept mum regarding the sale matter for years together, as the plaintiff and his mother were advised by the defendant No.1 not to discuss the matter with any other person. Defendant No. 1 had put fear in their minds that other persons may create obstacles in the finalization of the transaction – the property having been sold for Rs.22,000/-, i.e. far below the reserve price of Rs. 45,000/-, if the same is disclosed. The plaintiff Mirajudin averred that defendant No.1 again and again assured him that needful will be done, as early as possible, and sale certificate will be obtained very shortly.

5. Since defendant no.1 had been lingering on the matter, on the suggestion of one Sh. Mohd. Yamin, the plaintiff engaged Sh. Uttam Singh,

Advocate to inspect the file. On such inspection the plaintiff came to know that he had been cheated, as his bid was accepted but no notice of acceptance was issued to him. It was learnt that defendant no. 2 made an application to the Competent Officer stating that the plaintiff is a minor and gave the bid on her behalf, and he was virtually adopted by her, so she may be substituted as the auction purchaser. The plaintiff stated that he was neither the son, nor the adopted son of defendant No. 2. It was also learnt that later on, vide order dated 17.11.1960 the Competent Officer ordered defendant no. 2 to appear in person and to file an affidavit. He also required the plaintiff to personally appear, but no notice was issued to the plaintiff requiring his appearance. Defendant No. 2 filed an affidavit, and the Competent Officer passed the order dated 28.11.1960, thereby substituting the defendant no. 2 as the auction purchaser. She deposited the balance amount on 06.12.1960, and an order was passed to issue the sale certificate. The sale certificate was issued in favour of defendant No. 2 on 09.12.1960. The plaintiff moved an application dated 11.10.1971 before the Competent Officer to cancel the sale certificate issued in the name of defendant No.2 and for issuance of sale certificate in his own name, but the same was dismissed by the Competent Officer on 03.05.1972. Revision was preferred vide Revision No.37/72 but the same was also dismissed by the Appellate Officer on 23.06.1972. Thereafter, the present suit was filed before the civil court on or about 19.10.1972.

6. The stand of defendants, inter alia, was that the suit is barred under the provisions of Evacuee Interest (Separation) Act, 1951 and the Civil Court is not competent to try the suit. It was further claimed that the suit is

barred by limitation, as auction of the suit property took place on 24.09.1960; the Sale Certificate was issued on 09.12.1960, and; the suit had been filed in October,1972. The defendants also averred that the suit, as framed, was not maintainable. The plaintiff had no right to seek the relief of declaration or injunction. The defendants denied that the plaintiff was in possession of any portion of the suit property.

7. On merits, the defendants averred in their written statement that defendant No.2 was interested in the purchase of suit property and it was on her behalf that the plaintiff gave the bids, and the money i.e. 10% of the bid amount was also provided by Defendant no.2. Defendants denied most of the pleadings of the plaint and claimed that defendant No.1 did not offer any help to the plaintiff in the acceptance of the bid, and he did not visit plaintiff's house in the first week of November, 1960. It was further denied that any money was given by plaintiff's mother to defendant No.2. It was denied that the plaintiff paid the balance amount of Rs. 19,800/-.

8. Defendants denied the claim made by the plaintiff Mirajudin that he had contacted the office of the Competent Officer and he was told that the issue of sale certificate was being with-held on account of the non-sending of any list by the Custodian. It was further averred in the written statement that the Sale Certificate having been issued in December,1960, no question of the plaintiff being told about the non-issue thereof could arise.

9. Defendants averred in the written statement that Mohd. Yamin is the maternal uncle of plaintiff, and there have been several cases, civil as well as criminal, against the Mohd. Yamin and his associates for having tress-

passed on, or having forcibly occupied properties of others. Defendant No.2 further claimed that as per Evacuee interest (Separation) Act, plaintiff cannot challenge the orders of competent officer and revisional/ appellate officer in a Civil Court.

10. Plaintiff in his replication to the written statement denied the allegations raised in the written statement, and reaffirmed the pleadings of the plaint.

11. After completion of pleadings of the parties the trial court framed the following issues-

- (i) If the suit is properly valued for the purpose of the court fee and jurisdiction? OPP
- (ii) If the suit as framed is 'not maintainable'? OPD
- (iii) If the suit is bad for mis-joinder of parties? OPD
- (iv) If the suit is barred by the provisions of Evacuee Interest (Separation) Act of 1951? OPD
- (v) Whether the Civil Court is not competent to try the suit? OPD
- (vi) Whether the plaintiff has locus standi to file the suit? OPP
- (vii) If the suit is within time? OPP
- (viii) Whether the plaintiff had given bid on behalf of Defendant no.2 and 10 percent money was provided by the defendant no.2? OPD
- (ix) Whether the plaintiff is owner of the property in suit? OPP
- (x) Relief.

12. The parties led their respective evidence.

13. The learned Civil Judge decided all the issues in favour of the plaintiff and the suit was decreed on 16.02.1987, declaring the plaintiff to be the absolute owner of the suit property and the defendants were ordered to deliver the documents of title to the plaintiff.

14. The material findings returned by the Trial Court are the following:

- (1.) That the plaintiff is in possession of a part of the suit property.
- (2.) The suit was not barred by the provision of the Evacuee Interest (Separation) Act, as there was no dispute regarding determination of Evacuee interest.
- (3.) The suit was not barred by limitation, as a fraud had been played by the defendants in getting the name of defendant No.2 substituted as the auction purchaser in place of the plaintiff without notice to, or hearing the plaintiff. The Trial Court held that limitation for filing the suit in such a situation would arise from the date of knowledge. The plaintiff had specifically alleged in the plaint that he had no knowledge of the sale certificate got issued in the name of defendant no.2, and he became aware of the same in the year 1969-70. The suit filed in October, 1972 was, thus, within limitation.
- (4.) That the plaintiff is the owner of the suit property as he had made the bid, and it is his bid which had been accepted. Defendant no.2 had misrepresented and defrauded the authority/ Competent Officer by claiming that the plaintiff was her adopted son, when no

such adoption is permitted in Muslim law. His name was substituted by that of defendant no.2 as the auction purchaser behind his back, without notice to him.

15. Aggrieved by the aforesaid, the defendants preferred a Regular First Appeal. The first appellate court dismissed the appeal preferred by the defendants/ appellants and upheld the decree passed by the Ld. Trial court.

16. On 07.03.2007, the following substantial question of law were framed by the court:

- (i) Whether the suit for declaration without praying for part possession of the remaining property is maintainable?
- (ii) Whether the suit was instituted within time?
- (iii) Whether the Civil Court has jurisdiction to try the instant suit?

17. Mr. Bhaduri submits that the finding returned by the trial court, and affirmed by the first appellate court with regard to the plaintiff being in part possession of the suit property is perverse, as it is not premised on any cogent evidence on record. As per the plaint, the plaintiff claims to be in possession of a portion of the property. However, the portion of the property claimed to be in possession of the plaintiff is not specified. Mr. Bhaduri further states that the courts below erroneously relied on a plaint filed by Smt. Fatima Sultan- the defendant No.2 herein, against the brother of the defendant-Mohd.Sultan, where she stated that the brother of the defendant Mr. Mohd. Sultan is in possession of one room in the suit property. The possession of the brother of the plaintiff could not be construed as the

possession of the plaintiff/Mirajuddin. The courts below erroneously held that the plaintiff being in possession of a portion of the suit property, no prayer for possession was necessary, or required to be made in law. The submission of Mr. Bhaduri is that no evidence was led by the plaintiff to establish his possession in any portion of the suit property. The finding of the plaintiff being in possession was clearly contrary to the pleadings and evidence on record. In this regard, the relevant pleading of the plaintiff in the plaint reads as follows:

“23. That as the Plaintiff is in actual possession of a portion of suit building a fixed Court fee of Rs. 19.50 is aid as Court fee for declaration sought and a further court fee of Rs.13/- is paid for the relief of mandatory injunction.”

18. Mr. Bhaduri submits that, in any event, the suit for Declaration, without praying for possession of the remaining property was not maintainable. Mr. Bhaduri submits that even according to the plaintiff, he did not have complete possession of the suit property – either actual or symbolic.

19. Learned counsel submits that the court could not have granted the relief of declaration of his rights in the suit property in favour of the plaintiff on account of the embargo contained in Section 34 of the Specific Relief Act. The plaintiff had failed to seek the relief of possession, which he was able to, when he filed the suit. Mr. Bhaduri in furtherance of his argument places reliance on *Vinay Krishna V. Keshav Chandra AIR 1993 SC 957*; *M.K. Rappai V. John 1969(2) SCC 590 and*; *Muni Lal V. Oriental Fire and General Insurance Co. Ltd. AIR 1996 SC 642*.

20. On the issue-whether the Civil Court had jurisdiction to try the instant suit, Mr. Bhaduri makes reference to sections 18 and 20 of the Evacuee Interest (Separation) Act, 1851(“Evacuee Act”, for short). Sections 18 and 20 of the Evacuee Act, reads as follows-

*“18. **Finality of orders-** Save as otherwise expressly provided in this Act, every order made by any appellate officer or competent officer, shall be final and shall not be called in question in any Court by way of appeal or revision or in any original suit, application or execution proceedings.”*

*20. **Jurisdiction of Civil Courts barred in certain matters-** (1) Save as otherwise expressly provided in this Act, no Civil or Revenue Court shall entertain any suit or proceeding in so far as it relates to any claim to composite property which the competent officer is empowered to by or under this Act to decide, and no injunction in respect of any action taken or to be taken by the competent officer in respect of the composite property shall be granted by any Civil Court or other authority.*

(2) All suits and proceedings pending before a Civil or Revenue Court at the commencement of this Act shall, in so far as they relate to any claim filed before a competent officer under section 7, be stayed during the pendency of any proceedings under this Act.

(3) Nothing in sub-section (1) shall prevent any civil or revenue court from entertaining any suit or proceeding relating to any right in respect of any payment made, or property transferred or delivered, to a claimant under the provisions of this Act, which any other claimant or other person may be entitled by due process of law to enforce against the clamant to whom the payment is made or the property is delivered or transferred.”

21. The submission of Mr. Bhaduri is that in the present case, a certificate of sale was issued by and under the orders of the Competent Officer in favour of the appellant in pursuance of an auction sale conducted under

section 10 of The Evacuee Act. The plaintiffs' application to set aside the said sale was also dismissed by the Competent Officer, and the Revision was dismissed by the Appellate Authority. As the said orders are of the Competent Officer and Appellate Authority, the present suit was clearly barred under section 18 of the Evacuee Act. The impugned judgment had wrongly held that the suit was maintainable. Mr. Bhaduri submits that the power of review does not inhere in the competent authority.

22. In furtherance of this submission Mr. Bhaduri relies upon ***Riaz Ahmad & Ors. V. UOI*** (AIR 1974 Del 151); ***Amrik Singh V. UOI*** (1984(36) PLR 446); ***Mohd. Rehan V. UOI*** (AIR 1981 All. 256); ***Major Chandra Bhan Singh v. Latafat Gllah Khan*** (AIR 1978 SC(1814); ***Custodian Evacuee Property v. Jafran Begum*** (AIR 1968 SC 169); and ***Sohan Lal Jain through LRs v. UOI & Anr.*** 2009 1 AD (Delhi) 102.

23. On the issue of limitation, Mr. Bhaduri submits that, admittedly, the Competent Officer had issued the sale certificate in favour of defendant no.2 on 9.12.1960. The plaintiff had become a major in the year of 1965 and the suit was only filed in the year of 1972, which is after 12 years of issuance of the sale certificate, and after nearly 7 years of the Plaintiff attaining majority. The claim of plaintiff was that the entire dealings were done by his mother, and that the plaintiff and his mother had, for 12 years, not gotten to know that the sale certificate had been issued in favour of defendant no.2. Admittedly, the defendant no.2 is in possession of the suit property. Yet it was claimed that the plaintiff came to know about the sale certificate only on 10.11.1969, when the advocate for the plaintiff inspected the file of the competent officer. Mr. Bhaduri further submits that the falsity of the

plaintiff's case is brought out by the different versions set up by him before the Competent Officer-when he moved the application on 11.10.1971, and in the plaint. He has referred to the said documents, the averments made in the plaint, and the evidence led by the parties in this regard. He submits that the plaintiff was well aware of all the developments that had taken place before the Competent Officer contemporaneously, and there are gaping holes in his story. Mr. Bhaduri submits that this story of the plaintiffs is clearly absurd and false on the face of it.

24. Mr. Bhaduri further submits that the benefit of Section 17 of the Limitation Act for extension of limitation in case of fraud would not be available if the plaintiff could have discovered the alleged fraud by acting with reasonable diligence. Section 17 of the limitation Act, insofar as it is relevant, reads as follow:

*“ 17. **Effect of fraud or mistake-** (1) Where, in the case of any suit or application for which a period of limitation is prescribed by this Act,-*

(a) the suit or application is based upon the fraud of the defendant or respondent or his agent; or

(b) the knowledge of the right or title on which suit or application is founded is concealed by the fraud of any such person as aforesaid; or

(c) the suit or application is for relief from the consequences of a mistake; or

(d) where any document necessary to establish the right of the plaintiff or applicant has been fraudulently concealed from him,

*the period of limitation shall not begin to run until the plaintiff or applicant has discovered the fraud or the mistake **or could,***

with reasonable diligence, have discovered it; or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production:

.....”

25. Mr. Bhaduri submits that the plaintiff did not act with reasonable diligence, as the defendants were openly in occupation of the suit property and they asserted their rights of ownership openly. In furtherance of this submission Mr. Bhaduri relies upon *Sh. B Das v. R.K Das AIR 1969 Ori. 63*, wherein the Court has held that an applicant invoking the aid of section 17 must prove fraud beyond all reasonable doubt. The Court observed as follows:

“(5) To decide whether in the facts and circumstances of this case, opposite party is entitled to the benefits of Section 17 of the New Act, it is necessary to examine the scope and ambit of Section 17. Before an applicant takes advantage of the section, the onus is on him to plead and prove fraud.

Order 6, Rule 4 lays down that in all cases in which the party pleading relies on fraud, particulars with dates and items, if necessary, shall be stated in the pleadings. Order 7, Rule 6 requires that where a suit is instituted after the expiration of the period prescribed by the law of limitation, the plaint shall show the ground upon which exemption from such law is claimed. The same principle applies to an application. As to the quantum of proof, the Judicial Committee in Satish Chandra v. Satis Kantha Roy, AIR 1923 PC 73 laid down thus:

“Charges of fraud and collusion like those contained in the plaint in this case must, no doubt, be proved by those who make them --- proved by established facts or inferences, legitimately drawn from those facts taken together as a whole. Suspicious and surmises and conjectures are not permissible substitutes

for those facts or those inferences, but by no means requires the every puzzling artifice or contrivance resorted to by one accused of fraud must be necessarily be completely unraveled and cleared up and made plain before a verdict can be properly found against him. If this were not so, many a clever and dexterous knave would escape.”

*The same view was taken in Hansaraj Gupta v. Dehra Dun Mussoorie Electric Tramway Co. Ltd., AIR 1940 PC 98 and Narayan v. Official Assignee, Ragoon, AIR 1941 PC 93. **Fraud like any other charges of the criminal offence, whether made in civil or criminal proceedings, must be established beyond reasonable doubt. A finding as to fraud cannot be based on suspicion or conjecture.***

Therefore the opposite party no. 1 must, in the first instance establish that the petitioner was guilty of fraud in the matter of suppression of the sale- proclamation.

(6) If fraud is established, then the onus would shift to the petitioner to prove that influence of the fraud has ceased to operate, or that opposite party No. 1 could have with reasonable diligence discovered the fraud. In Rahimbhoy v. C.A. Turner, (1893) 20 Ind App 1 (PC) their lordships of the judicial Committee observed thus:

“Their lordships consider that when a man has committed a fraud and has got property thereby, it is for him to show that the person injured by his fraud and suing to recover the property has had clear and definite knowledge of those facts which constitute fraud, at a time which is to remote to allow him to bring the suit.”

This has been consistently followed in all subsequent Indian decisions. In Narayan Sahu v. Damodar Das, 16 Cal WN 894 Sir Lawrence Jenkins made the following observations:

“But it was a saying of an early Chancellor, that frost and fraud end in foul; and in this lies the truth of the matter. Fraud at any rate the class of fraud with which we are her concerned,

is a continuing influence and until that influence ends, it retains its power of mischief.”

The fraud referred to in that case was regarding the fraudulent concealment of the sale-proclamation as in this case, and the application under Order 21, Rule 90 had been filed invoking the aid of Section 18 of the old Act. A full bench of the Calcutta High Court in Bisman Chandra v. Promotho Nath, AIR 1922 Cal 157 (FB), reviewed the entire position and followed the aforesaid view. Their lordships held that a person who desired to invoke the aid of the Section 18 of the old Act must establish that there was fraud. Once that was established, the burden would shift to the other side to show that the plaintiff had knowledge of the transaction beyond the period of limitation. It is emphasized that such knowledge must be clear and definite of the facts constituting the particular fraud. It is not sufficient to show that the applicant under Order 21, Rule 90 had some clues and hints which perhaps vigorously and acutely followed up might have led to complete knowledge of fraud.

If opposite party No. 1 is successful in establishing that the petitioner was guilty of fraud in the in suppressing the sale-proclamation, the onus would shift to the petitioner not merely to establish that opposite party No. 1 had a vague knowledge or opinion of the sale but that he had a full knowledge of all the facts resulting in sale. (emphasis supplied)

26. Mr. Bhaduri submits that the plaintiff failed to establish any fraud by the defendants. He submits that the defendant No. 2 moved a written application before the Competent Officer to seek substitution of the name of defendant No. 2 in place of the name of the plaintiff as the auction purchaser. He submits that it was not the obligation of the defendants to notify the plaintiff of the said application. In any event, the plaintiff was well aware of the date already fixed in the proceedings by the Competent Officer. The plaintiff did not appear on the appointed date, or on any date

thereafter to stake his claim to the property in question. He did not deposit the balance sale consideration. He did not raise any issue despite the defendant No. 2 being put in possession of the suit property and started claiming rights in the property after 12 years of the issuance of the sale certificate, and 7 years after he attained majority. All these facts clearly militate against the plaintiffs claim of a fraud by the defendants.

27. Mr. Bhaduri further draws the courts attention to Articles 58 and 113 of the Limitation Act, 1963 which provide a limitation of 3 years to obtain any declaration or injunction. Articles 58 and 113 of the Limitation Act read as follows:

58.	<i>To obtain any other declaration</i>	<i>Three years</i>	<i>When the right to sue first accrues.</i>
113.	<i>Any suit for which no period of limitation is provided elsewhere in this Schedule</i>	<i>Three years</i>	<i>When the right to sue accrues.</i>

28. Mr. Bhaduri submits that the period of limitation to obtain the relief of declaration/injunction commenced when the right to sue first accrued. A perusal of the proceeding-sheet before the competent officer would clearly show that respondent was present in almost all the hearings when the proceedings were held. Thus, clearly, the limitation commenced when the Competent Officer passed the necessary order i.e. in December, 1960.

29. Mr. Bhaduri further submits that on the face of it, in the above facts the plaintiffs cannot claim that the so called fraud could not be discovered by them. The suit filed was clearly hit by limitation. He submits that the impugned judgments have wrongly and erroneously held that the suit is within time, merely because some frivolous vague and unsubstantiated allegations of fraud have been made.

30. In response to the submissions made by Mr. Bhaduri, Mr. Srivastava points out that, admittedly, the bid was made by Mirajuddin-the Plaintiff and that till 15.11.1960 there was no issue raised about who was the bidder, though the auction took place on 24.09.1960.

31. Mr. Srivastava draws the Courts attention to, Ex. PW 1/4, which is the order of the competent Dt. 5.11.60. which reads as follows:

“A.C.(C) has intimated vide his note dated 5.11.69 that the custodian is agreeable to the acceptance of bid for Rs. 22000/- . Consequently the bid of the auction-purchaser for Rs. 22000/- is accepted. The A.P. be informed accordingly and required to appear on 15.11.60. Account be also put on that day.”

32. He further refers to the order of the Competent Officer Dt. 15.11.60 which is Ex. PW 1/3, and reads as follows:

“Account has been put up. The A.P. now deposit Rs. 19800/- balance of sale price within 15 days. Failing which the property will be put to auction again & E.M. forfeited. Adj.to 6.12.60.”

33. The Defendant No.2- Fatima malafidely and fraudulently made an application to the competent officer, which is Ex. PW 1/5, and reads as follow:

“Petitioner Fatima Sultan wife of Mohd Vakil of 1622 Gali Sakan Suiwalan, Delhi, submits:-

1. That the above mentioned property was sold by public auction and the highest bid of Mirajuddin of Rs. 22000/- has been accepted.

2. That actually Mirajuddin is a minor and was bidding on behalf of your petitioner. Mirrajuddin has been virtually adopted by your petitioner.

3. That the petitioner is prepared to abide and ratify all acts of the minor and prays that the petitioner may be considered to be the real bidder to which Mirajuddin has no objection. It may also be mentioned that Mirajuddin being a minor in case he fails to deposit the balance purchase money the Hon'ble Court will be in a position to forfeit the 10% deposit.

Prayed accordingly.”

34. Mr. Srivastava submits that the plaintiff-Mirajuddin was not the adopted son of Fatima-Defendant No.2 and this fact has not been established by her. Mr. Srivastava submits that in Muslim law, there is no concept of adoption, as claimed by defendant No. 2 in her application Ex.PW1/5. In this regard, he places reliance on ***Sunder Shekhar Vs. Shamshad Abdul Wahib Supariwala and others*** (2014) 1 AIR Bombay R 181 decided on 20.11.2013 in appeal from order No. 948/13 by the Bombay High Court. He submits that the mother of a minor child, in any event, is not the guardian in Muslim law. In this regard, he places reliance on ***Meethiyan Sidhiqu vs Muhammed Kunju Pareeth Kutty & Ors*** (1996) 7 SCC 436.

35. He submits that the defendants did not appear as their witnesses. Even though defendant No. 2 was alive when the evidence was recorded in

the suit, she has chosen to produce her son and attorney as the primary witness, who deposed on behalf of the defendants on the strength of his power of attorney. Mr. Srivastava has also placed reliance on ***Sardar Gurbakhsh Singh Vs. Gurdial Singh and another*** AIR 1927 PC 230 wherein the Privy Council held that an adverse inference could be drawn against the defendants in view of the failure of defendant No. 2 to appear as her own witness. She did not appear in support of her defence as she would not have withstood cross-examination by the plaintiff. Defendant No. 2 died nearly 12 years after examination of DW5 Md. Zamil-her son and attorney. On the same lines, he places reliance on the decision of the Bombay High Court in ***Martand Vs. Radhabai*** AIR 1931 Bombay 97.

36. Learned counsel submits that a power of attorney holder is not a competent witness. In this regard, he places reliance on the judgment of the Supreme Court in ***Janki Vashdeo Bhojwani & Anr. Vs. The Indusind Bank Limited & Others*** (2005) 2 SCC 217. He also sought to discredit the testimony of DW5-Md. Zamil-the attorney and son of the defendants, firstly, on the ground that he was a minor himself when the auction in question took place; and secondly, he has not explained as to why the auction bid was made in the name of the plaintiff, if he and his mother i.e. defendant No. 2 were both present when the auction in question took place and the amount of 10% i.e. Rs.2200/- was given by defendant No.2. He has also read and referred to the testimony of DW4-M.P.Srivastava to submit that he was completely unreliable.

37. Mr. Shrivastava submits that vide exhibit Ex. DW. 2/P-1, i.e. the order of the competent officer dated 18.11.1960, the Competent Officer had

ordered both Mirajudddin- plaintiff No.1 and Fatima- Defendant No.2 to appear personally, or file affidavits in support of the application filed by Fatima, on or before 22.11.1960. An affidavit was filed by Fatima-Defendant No.2 as per the order of the competent officer, i.e. PW 1/6. Wherein she solemnly declared as follows:

“ 1. That the above mentioned property was sold by public auction and the highest bid of Mirajuddin of Rs. 22000/- has been accepted.

2. That actually Mirajuddin is a minor and was bidding on behalf of your Deponent. Mirajuddin has been virtually adopted by your deponent.

3. That deponent is prepared to abide and ratify all acts of the minor and prays that deponent may be considered to be the real bidder to which Mirajuddin has no objection. Deponent has been advised that Mirajuddin beings minor in case he fails to deposit the balance of the purchase money the Hon'ble Court will not be in a position to forfeit the 10% deposited in this name.”

38. However, the plaintiff was not noticed in the application of Fatima Sultan and his affidavit was also not filed. Vide Ex. PW 1/7, dt 28.10.1960 i.e. the order of the Competent Officer allowed the application of Fatima-Defendant No.2 behind the back of the plaintiff. Relevant portion from the order is replicated below:

“Smt.(sic) Fatima Sultan has filed an application supported by an affidavit that Mirajuddin is a minor and that he gave the bid on her behalf. She has requested that her name be substituted as auction purchaser. I accept her request and substitute her as such. She should now pay the balance amount within this week. Case to come up on 6.12.60 as already orders.”

39. Mr. Srivastava draws the attention of the court to the English translation of the examination-in-chief of Syed Nawab Husain, who was the reader of the Competent Officer(PW 1), where he stated that no notice was issued to the plaintiff- Mirajuddin on Fatima's application. Mr. Srivastava submits that the aforesaid facts present an undeniable case of a fraud being played upon the plaintiff by the defendants in getting the name of defendant No. 2 substituted in place of the name of the plaintiff as the auction purchaser in getting the sale certificate issued by the Competent Officer. Mr. Srivastava submits that there was no reason for the plaintiff to remain quiet for all these years, if he was actually aware of the fact that the sale certificate have been issued in favour of plaintiff No. 2. He places reliance on the impugned judgments of the two courts below and submits that the findings of fact returned by the courts below being consistent, cannot be interfered with by this Court, as they are well reasoned.

40. So far as maintainability of the suit is concerned, Mr. Srivastava submits that the suit was maintainable to seek the relief of declaration and injunction since the plaintiff was consistently found to be in possession of a portion of the suit property. He places reliance on the decision of the Andhra Pradesh High Court in ***Bijivemula Venkata SubbaReddy Vs.Jangam Satya Babu*** 2009(2) ALT 689 in this regard. He further submits that the suit was not barred under the provisions of the Evacuee Act since Section 20 specifically provides that the jurisdiction of the civil court and the revenue court is not barred from entertaining any suit or proceeding relating to any right in respect of any payment made, or property transferred or delivered, to a claimant under the provisions of the Evacuee Act, which

any other claimant or other person may be entitled by due process of law to enforce against the claimant to whom the payment is made or the property is delivered or transferred. He submits that the plaintiff cannot be rendered remediless in view of the fraud perpetrated upon him by the defendants.

41. On the issue of limitation, Mr. Srivastava submits that the findings returned by the two courts below are consistent and, therefore, should not be interfered with by this Court. He submits that it was only upon inspection of the record of the Competent Officer by the Advocate appointed by the plaintiff, namely, Shri Uttam Singh, that the correct factual position was revealed to the plaintiff. The said information was derived only in the year 1969-70 and the suit was filed within the period of limitation, after first approaching the Competent Officer and then the Appellate Authority in revision. On the aspect of limitation, Mr. Srivastava has relied upon several decisions, namely, *S.P. Chengalvaraya Naidu (Dead) by LRs Vs. Jagannath (Dead) By L.Rs.* (1994) 1 SCC 1; *Ved Prakash Vs. Chairman/Administrator* 137(2007) DLT 84, *Sewa International Fashions and Anr. Vs. Employees Provident Fund and Organizations and others* 138(2007) DLT 185; and *Bhagwana Vs. Shadi* AIR 1934 Lahore 878.

42. In his rejoinder, Mr. Bhaduri submits points out that it has come in the evidence that the proceeding sheets of 05.11.1960 and 15.11.1960 of the Competent Officer were signed in Urdu by the plaintiff-Mirajuddin. On 15.11.1960, the proceedings were adjourned to 06.12.1960. In the meantime, on the application of defendant No.2, the name of defendant No.2 was substituted as the auction purchaser on 28.11.1960. There is no explanation furnished by the plaintiff as to why he did not appear before the

Competent Officer on 06.12.1960 if, according to him, he was the real bidder and auction purchaser and defendant No. 2 had played a fraud by getting her name substituted. He further submits that there is no explanation furnished by the plaintiff as to why the plaintiff did not deposit the balance amount, and also why he had not taken further steps before the Competent Officer with regard to his bid.

43. In Regular Second Appeal, this Court would not reappreciate evidence and would normally not interfere with consistent findings of fact returned by the Trial Court and First Appellate Court. However, a well recognized exception to this rule is a case where the finding of fact returned by the Trial Court and the First Appellate Court are not premised on the evidence brought on record. However, it should not be a case of mere re-appreciation of the evidence brought on record. If the trial court and the first appellate court have appreciated the evidence, and arrived at a plausible view, this Court would not interfere merely because it prefers a different view or conclusion. Another exception to the rule of non-interference is a case where the courts below have ignored the evidence brought on record, and not taken into account their effect on the conclusion drawn. In this regard, reliance is placed on *Hero Vinoth (Minor) Vs. Seshammal* (2006) 5 SCC 545 wherein the Supreme Court with regard to Section 100 CPC held as under:

“24. (i)

(ii)

(iii) The general rule is that High Court will not interfere with the concurrent findings of the courts below. But it is not an absolute rule. Some of the well-recognized exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to “decision based on no evidence”, it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.”

44. The aforesaid view has been followed in ***Sebastiao Luis Fernandes (Dead) through LRs and Others Vs. K.V.P. Shastri (Dead) through LRs and others*** (2013) 15 SCC 161.

45. So far as the finding with regard to the plaintiffs possession in a portion of the suit property is concerned, it is seen that the averment of the plaintiff in para 23 of the amended plaint was that he “*is in actual possession of a portion of the suit building ...*”. The said averment was made to justify the paying of fixed Court fee of Rs.19.50 in respect of the relief of declaration sought by him. Pertinently, he does not specify the portion of the suit property he claimed to be in possession of. He has not disclosed as to how, and in what capacity he came to occupy any portion of the suit property. It was the plaintiffs own case that the suit property had been auctioned by the Competent Officer under the Evacuee Interest (Separation) Act, 1951. It was not his case that prior to the said auction, the plaintiff or his family were in occupation of any portion of the suit property in any capacity whatsoever. It was the plaintiffs case that he had been defrauded by the defendants, who substituted the name of the plaintiff as the

auction purchaser, behind his back, with the name of defendant no.2, and on that basis got the sale certificate issued way back on 09.12.1960.

46. In his examination in chief, the plaintiff/PW-3 does not state that he is in possession of any portion of the suit property. In his cross examination, he states that he is possessed of a room admeasuring 20 sq. ft. approximately-without specifying which portion of the suit property wherein the said room is allegedly situated.

47. The two courts below have placed heavy reliance on Ex. X-5 and Ex. X-6 to return the finding that the plaintiff was in possession of a portion of the suit property. Ex. X-5 is the suit for permanent injunction filed by defendant no.2 Smt. Fatima Sultan against Mohd. Sultan as the sole defendant. Mohd. Sultan was the brother of the plaintiff. In Ex. X-5, there is no whisper by defendant no.2 that the plaintiff herein, Mirajuddin, was in possession of any portion of the suit property. The grievance of defendant no.2 Smt. Fatima Sultan – the plaintiff in that suit, was that the defendant in the suit-Mohd Sultan was occupying unauthorisedly one room in the suit property shown in red colour in the site plan, wherein he was running his business of old motor parts. The grievance of the plaintiff in that suit was that the defendant Mohd. Sultan was creating nuisance, inter alia, in respect of the business being run by the husband of the plaintiff, namely, Mohd. Vakil, who was running a hotel in premises No.735 and also in a portion of the premises No.739, Jama Masjid, Delhi, which is the suit property. The defendant in the said suit had filed the written statement Ex. X-6 stating that the suit property was owned by the plaintiff herein i.e. Mirajuddin. He claimed that Mirajuddin is in occupation of the property in his own right as

the owner, and was carrying on his business of old motor parts. Pertinently, the plaintiff herein – Mirajuddin did not jump into fray to claim that he is in occupation of any portion of the suit property. The defendant in the said suit Mohd. Sultan also did not claim possession of any portion of the suit property, nor it was his claim that both the brothers were in joint possession of the suit property. Even if such a claim had been made, the same possibly could not have constituted an admission on the part of the plaintiff in the said suit i.e. Smt. Fatima Sultan, defendant no.2 herein.

48. The said suit was stayed by the learned Sub-Judge, First Class, Delhi on 06.08.1980 vide Ex. X-4. The two courts below have held the plaintiff to be in possession of a portion of the suit property on the basis of Ex. X-5 and X-6.

49. I fail to appreciate as to how the said documents lead to the conclusion that the plaintiff Mirajuddin was in possession of any portion of the suit property. Defendant no.2 herein had not averred or admitted that the plaintiff herein was in possession of any portion of the suit property. The averment of defendant no.2/ plaintiff in the said suit, was that Mohd. Sultan was in occupation of a defined portion marked in red colour in the site plan filed with the suit, wherein he was running his old motor parts business. Possession of the plaintiff's brother could not be construed as the possession of the plaintiff. Pertinently, the defendant in the suit claimed in his written statement (Ex.X6) that the plaintiff herein –Mirajuddin was the owner and in possession of the property bearing No. IX/436(Old) 739(New), Jama Masjid, Delhi. Mohd. Sultan did not make said averment only in relation to the one shop bounded in red in the plaint (Ex.X5), but in relation to the

entire property. This averment of Mohd. Sultan undisputedly was not true inasmuch, as, it is not even the plaintiff's case in the present suit that he was in occupation of the entire suit property when he filed the suit. The Trial Court, in para 6 of its judgment, without discussing the evidence (apart from referring to Ex. X-4, X-5 and X-6), while returning the finding in favour of the plaintiff-that he is in possession of a portion of the suit property, observed "*the evidence placed on file clearly shows that the plaintiff is in possession of part of the premises in suit*". It was for the plaintiff to positively establish his possession in the portion that he claimed to be in possession of. His evidence is completely silent in this regard. He did not produce any evidence, such as electricity bills, municipal inspection records, or any other document, such as, correspondence, which, might have been undertaken at the said address. The mere failure of defendant No. 2 to appear as her own witness cannot come to the aid of the plaintiff. The plaintiff has to stand on his own legs. In my view, the said finding returned by the two courts below, though consistent, is not supported by any evidence at all and, therefore, cannot be sustained.

50. Even if one were to proceed on the basis that the plaintiff was, indeed, in possession of some portion of the suit property when he filed the suit in question, the failure of the plaintiff to seek the relief of possession in respect of the remaining portion of the suit property which was not in his possession, and was in possession of defendant no.2 either directly or indirectly i.e. through tenants who were attorning to defendant no.2, to my mind, is fatal and bars the Court from making a declaration of title in favour

of the plaintiff as sought by him. Section 34 of the Specific Relief Act insofar as it is relevant, reads as follows:

“34. Discretion of court as to declaration of status or right.— Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

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

***Explanation.**—A trustee of property is a “person interested to deny” a title adverse to the title of someone who is not in existence, and whom, if in existence, he would be a trustee”.*

[emphasis supplied]

51. When the plaintiff filed the suit, he was “*able to seek further relief than a mere declaration of title*”. He was able to seek the relief of possession against the defendants, and in particular defendant no.2 Fatima Sultan, of the suit property (even if it was only partially in her possession). However, he did not seek the said relief.

52. In **Vinay Krishan** (supra), the court has held that upon failure of plaintiff to claim the relief of possession, the discretion of the court to grant the relief of declaration is barred. The court further held that a mere prayer in the plaint that such other relief may be granted that the court may deem fit, is not sufficient to construe it as a prayer to seek the relief of possession

and that there has to be a specific plea for possession. Relevant extract from this judgment reads as follows;

“13. From the reading of the plaint it is clear that the specific case of the plaintiff Jamuna Kunwar was that she was in exclusive possession of property bearing no. 52 as well. She thought that it was not necessary to seek the additional relief of possession. However, in view of the written statements of both the first and second defendant raising the plea of bar under section 42, the plaintiff ought to have amended and prayed for the relief of possession also. In as much as the plaintiff did not choose to do so she took a risk. It is also evident that she was not in exclusive possession also. In as much as the plaintiff did not choose to do so she took a risk. It is also now evident that she was not in exclusive possession because admittedly Keshav Chandra and Jagdish Chandra were in possession. There were also other tenants in occupation. In such an event the relief of possession ought to have been asked for. The failure to do so undoubtedly bars the discretion of the Court in granting the decree for declaration.”

[Emphasis supplied]

53. Section 42 of the Specific Relief Act, 1877, as mentioned in the excerpt above, is the same as section 34 of the Specific Relief Act, 1963.

54. In **M.K. Rappai (supra)** the court held that a suit for a bare declaration without further relief for possession and other reliefs is not supportable. A bare declaration of right will be within the mischief of Section 42 of the Specific Relief Act, 1877 i.e. section 34 of the Specific Relief Act, 1963. Relevant portions of the judgment reads as follows:

“10. Counsel for the respondents contended that the decision of the High Court could be upheld because all that it said was that the plaintiffs were entitled to a right and the question of

appointment would be canvassed in the suit. This contention is unacceptable because a suit for a bare declaration of right without further relief for possession and other reliefs as the fact and circumstances would require is not supportable.

11.

12. *a bare declaration of right will be within the mischief of section 42 of the Specific Relief Act, 1877 and Section 34 of the Specific Relief Act, 1963.*”

[Emphasis supplied]

55. In **Muni Lal** (supra), the court held that merely asking for declaration, that the plaintiff is entitled to payment for loss of truck, but not seeking consequential relief of payment of quantified amount, would be barred. Relevant extract from this decision reads as follows;

“4. Section 34 of the Specific Relief Act provides that any person entitled to a 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 such a declaration and the plaintiff need not ask for such relief. However proviso to the said section puts the controversy beyond pale doubt that “no courts shall make any such declaration where the plaintiff, being able to ask for other relief than a mere declaration of title, omits to do so.” ***In other words, mere declaration without consequential relief does not provide the needed relief in the suit, it would be for the plaintiff to seek both the reliefs. The omission thereof mandates the court to refuse to grant the declaratory relief. In this appeal, the appellant has merely asked for a declaration that he is entitled for payment for the loss of the truck in terms of the contract but not consequential relief of payment of the quantified amount, as rightly pointed it out by the courts below.***”

[Emphasis supplied]

56. The learned Trial Court returned findings on issues 1 and 2 under a common discussion. A perusal of the discussion found on issues 1 and 2 in the judgment of the Trial Court shows that the focus of the learned Sub-Judge was on the aspect of valuation of the suit and payment of Court fee by the plaintiff. However, on the aspect of maintainability of the suit, the Trial Court did not advert to Section 34 of Specific Relief Act at all. All that it observed was:

“So far as issue No.2 is concerned the suit is maintainable for declaration and mandatory injunction.”

57. The First Appellate Court in the impugned judgment specifically records the submission of the appellant that the suit was barred by Section 34 of the Specific Relief Act, since the plaintiff had merely sought a decree of declaration when he was able to seek further relief than a mere declaration of his title, and he had omitted to do so. However, the First Appellate Court does not deal with the said aspect at all in the body of the impugned judgment.

58. In view of the aforesaid discussion, the first substantial question of law is answered in favour of the appellant and against the respondent.

59. Turning to the second substantial question of law with regard to the jurisdiction of the civil court to try the suit, the plaintiff claims that the civil court's jurisdiction was barred in view of the provisions contained in Sections 18 and 20 of the Evacuee Act, which have been extracted hereinabove. Mr. Bhaduri has placed reliance on several decisions taken note of hereinabove.

60. **Riaz Ahmad (supra)** is relied upon to submit that the orders of the competent authority setting aside the sale, or refusing to set aside a sale cannot be challenged before the civil court on the ground of the sale being collusive, or not properly published, or not properly conducted. Relevant portion of the judgment reads as follows;

“In view of the matter, whether the application had not been made for setting aside the sale or having been made, it was rejected, the legal position remains the same and neither the sale nor the orders of the authorities refusing to set aside the sale can be challenged in the Civil Court on the ground of the sale being collusive or not properly published or not properly conducted. The reasoning of the Supreme Court in Jafran Begum’s case, AIR 1968 SC 169 (supra) in respect of section 7 of the administration of evacuee property act, applies with equal force to the bar created by section 27 of the Displaced Persons Act in respect of action under the said Act. There is therefore no force in the revision.”

61. The decision in **Riaz Ahmed (supra)** was a decision rendered under the Administration of Evacuee Property Act. The Court was dealing with Section 46 of the said Act and it was in that background that the court held that the jurisdiction of the civil court would be barred. Section 46 of the Administration of Evacuee Property Act expressly bars the jurisdiction of a civil court or revenue court from entertaining or adjudicating upon any question as to whether any property, or any right to or interest in any property, is, or is not an evacuee property. It also bars the jurisdiction of the civil court and revenue court to question the legality of any action taken by the Custodian General or Custodian under the Act and in respect of any matter which the Custodian General or the Custodian is empowered by or under the Act to determine.

62. The position is, however, materially different when one examines the provisions of the Evacuee Act. The Evacuee Act was enacted to make special provision for the separation of interests of evacuees from those of other persons in property in which such other persons are also interested, and for matters connected therein. Under the Evacuee Act, the Competent Officer appointed under Section 4 of the said Act by the State Government, has the jurisdiction to decide “*any claim relating to any composite property situated within the limits of local area of his jurisdiction.....*”. The said Act provides for the procedure to be followed by him while determining or separating the evacuee interest in a composite property. A composite property has been defined to primarily mean, ‘*any property in which an interest has been declared to be an evacuee property or is vested in the Custodian under the Administration of Evacuee Property Act, 1950, and in which the interest of the evacuee consists undivided share of the property held by him as a co-sharer or partner of any other person who is not an evacuee.*’ The Competent Officer is vested with the jurisdiction to hold an inquiry into the claim made by any person who is an evacuee and claims interest in a composite property, and pass an order determining the interest of the evacuee and the claimant in the property (non-evacuee) in terms of Section 8 of the said Act. Section 10 of the said Act provides the manner in which the interest of an evacuee would be separated from those of the claimants/non-evacuees, and one of the modes of separation is by sale of the property and distribution of the sale proceeds between the Custodian on the one hand, and the claimant/non-evacuee on the other hand in proportion to the share of the evacuee and the claimant in the property. It appears that the

property in question-being a composite property, was sold by the Competent Officer by resort to Section 10(a)(iii) of the Evacuee Act.

63. The dispute raised by the plaintiff in the present suit is not in relation to an order made by the Competent Officer or the Appellate Officer under the provisions of the Act. The plaintiff did not challenge any order or decision made either under Section 8 or under Section 10 of the Evacuee Property Act. What the plaintiff challenged was the act of the defendants in seeking substitution of the name of defendant No. 2 as the successful bidder in place of the name of the plaintiff allegedly behind his back. That being the position, the bar of jurisdiction contained in Section 18 of the Evacuee Act, to my mind, did not apply in respect of the orders dated 03.05.1972 passed by the Competent Officer and the order dated 23.06.1972 by the Appellate Officer.

64. Pertinently, Section 20 of the Evacuee Act, which has been extracted hereinabove further clarifies the position and leaves no room for doubt with regard to the maintainability of the present suit. Section 20(1) provides that no civil or revenue court shall entertain any suit or proceeding insofar as it relates to any claim to composite property which the Competent Officer is empowered to by or under the said Act to decide. Section 20(3), however, makes it clear that nothing in sub-section (1) of Section 20 shall prevent any civil or revenue court from entertaining any suit or proceeding relating to any right in respect of any payment made, or property transferred or delivered, to a claimant under the provisions of this Act, which any other claimant or other person may be entitled by due process of law to enforce against the claimant to whom the payment is made or the property is

delivered or transferred. Thus, the jurisdiction of the civil court or the revenue court from entertaining any suit or proceeding *inter se* the claimant or any other person in relation to any property delivered or transferred by the Competent Officer is not barred, and the right to file such a suit or proceeding is specifically preserved. In the present suit, the plaintiff did not seek to question the decision of the Competent Officer to auction the composite property. He also did not seek to assail the acceptance of the bid by the concerned authority submitted by him. What he assailed was that the substitution of the name of defendant No. 2 in place of his name as the auction purchaser at the behest of the defendants, allegedly by playing the fraud upon him and upon the authorities. Thus, I am of the view that the present suit of the plaintiff was not barred by Sections 18 and 20 or by any other provision of the Evacuee Act and the Civil Court had the jurisdiction to try the instant suit.

65. For the same reasons, the other decision relied upon by the appellant on the aforesaid aspect are of no avail.

66. **Amrik Singh (supra)** was a civil suit challenging the sale of a house by auction. The court held that the discretion exercised by the Rehabilitation authorities cannot be assailed in a civil suit. Relevant portion has been replicated below.

“8. The house in dispute was auctioned on February 24, 1960, and the highest bid offered was that of Prabati for Rs. 11100/-. Her bid was accepted on March 4, 1960, and the entire price of the house has since been recovered from her claim. The sale by auction in favour of Prabati has not been set aside so far by the Rehabilitation authorities. In view of the fact

that the sale by auction of the house in dispute in favour of Parbati stands, the question of its transfer at the reserve price to Amrik Singh does not arise.

Section 36 of the Act reads:-

“36. Bar of Jurisdiction,- save as otherwise expressly provided in this Act, no civil Court shall have jurisdiction to entertain any suit or proceedings in respect of any matter which the Central Government or any officer or authority appointed under this Act is empowered by or under this Act is empowered by or under this act to determine, and no injunction shall be granted by any Court or other authority in respect of any auction taken or to be taken in pursuance of any power conferred by or under the Act.”

9. *It has already been held above that the matter of transfer of house in dispute in favour of Amrik Singh was within the exclusive jurisdiction of the Rehabilitation authorities. The authorities have exercised the discretion against him. It is obvious that the intra vires discretion exercised by the Rehabilitation authorities against Amrik Singh cannot be assailed in civil Court under section 36 of this Act.*

10. *The learned counsel for the appellant has argued that the Chief Settlement Commissioner had issued an interim direction on February 18, 1960, in revision filed by Amrik Singh against the revaluation of the house that the sale of the house would be void if his revision was accepted. The revision of the appellant was accepted. In the meantime, the house was put to auction on February 24, 1960. In view of the interim direction the sale by auction in favour of Prabati is to be treated as void. This contention is also without merit. Prabati was not a party in the revision filed by the appellant. The direction issued by the Chief Settlement Commissioner was not conveyed to her at any time. This apart, the appellant cannot invoke the direction in the face of the discretion exercised by the rehabilitation authorities in the matter of transfer of house in dispute against him.*

11. In the result, the appeal fails and is dismissed with no order as to cost.”

67. Thus, it would be seen that **Amrik Singh**(supra), which was a case under the Displaced Persons (Compensation & Rehabilitation) Rules, 1955, related to the issue of bar of jurisdiction of civil court under Section 36 of the said Act. The Court held that the matter of transfer of the house in dispute was within the exclusive jurisdiction of rehabilitation authorities and that the *intra vires* discretion exercised by the rehabilitation authorities could not be assailed in a civil court. The said decision is clearly distinguishable in view of the aforesaid discussion.

68. **Mohd. Rehan** (supra) was a suit filed to seek the setting aside of the sale of a waqf property as an evacuee property, where all the beneficiaries of the waqf deed had migrated to Pakistan. The property was dealt with by the government, as it was acquired under the Administration of Evacuee Property Act. The court held that since the claim was contested by the Custodian, the claim could not be adjudicated upon by the civil courts. Relevant extract from this decision reads as follows:

“Section 36 of the Displaced Persons (Compensation and Rehabilitation) Act bars the jurisdiction of the civil Court to entertain any suit or proceeding in respect of any matter which the Central Government or any Officer or Authority appointed under this Act is empowered by or under this Act to determine. As observed by the Supreme Court in Custodian, Evacuee Property v. Jafran Begum the jurisdiction of the civil or revenue Court is barred under Section 46 and no such Court can entertain any suit or adjudicate upon any question whether a particular property or right to or interest therein is or is not evacuee property. The decision is made final whether based on

issues of law or fact by Section 28 a Section 46 bars the jurisdiction of civil and revenue courts in matters which are decided under Section 7 whatever may be the basis of the decision, whether issues of fact or of law and whether simple or complicated. The claim of the plaintiff that as non-evacuee beneficiary he had interest in the property in dispute could not be entertained by the civil Court.”

“A bench of this court in the Custodian Evacuee Property V. Smt. Bibijan held that by virtue of Section 4 of the Act the provisions of section 11 which provides that in respect of any Waqf Alal Aullad, where the Mutwali is an evacuee, the property forming the subject matter of the waqf shall vest in the Custodian subject to the rights of the beneficiaries under the waqf, if any, who are not evacuees will override the rule under the Mohammedan law that waqf property vests in God. The property in question having vested in the custodian is liable to be dealt with under the provisions of the administration of Evacuee Property Act and the Displaced persons (Compensation and Rehabilitation) Act and the declaration sought for must be held to be misconceived.”

69. Section 46 of the Administration of Evacuee Property Act was invoked by the Court to hold that the jurisdiction of the civil or the revenue court was barred since the issue raised in the suit related to adjudication of a question whether the property in question, or any right to or interest therein is, or is not, evacuee property and to the legality of action taken by the Custodian General or the Custodian under the said Act. It also related to a matter which the Custodian General or a Custodian is empowered by or under the said Act to determine. This decision is also, therefore, distinguishable and has no application in the facts of the present case.

70. Reliance placed on *Major Chandra Bhan (supra)* appears to be completely misplaced as the said decision does not squarely deal with the issue of bar of jurisdiction of a civil court.

71. For the same reason as given hereinabove, the decision in *Custodian Evacuee Property, Punjab (supra)* has no application to the facts of the present case. The decision in *Sohan Lal Jain (supra)* is also of no avail to the appellant for the same reasons.

72. Consequently, the third substantial question of law, as framed aforesaid, is answered against the appellant and in favour of the respondent.

73. Turning now to the issue of limitation, the courts below have relied upon Section 17 of the Limitation Act to hold that the suit filed by the plaintiff was not barred by limitation. The said section, insofar as it is relevant, has been extracted hereinabove.

74. Consequently, if the evidence brought on record reveals that the plaintiff had, firstly, not established the fraud and, secondly, had discovered the so-called fraud, or could, with reasonable diligence, have discovered it earlier than claimed by him, the suit would fail due to the bar of limitation.

75. The reliefs sought in the suit, namely, for declaration and injunction prescribe the period of limitation of three years from the time when the right to sue first accrues – under Article 58 of the Schedule to the Limitation Act (qua the relief of declaration), and under Article 113 of the Schedule to the Limitation Act (qua relief of injunction). The evidence would, therefore, need a closer scrutiny to examine whether, firstly, the plaintiff established

the perpetration of a fraud by the defendants upon the plaintiff and, secondly, whether the cause of action to seek the reliefs as sought by the plaintiff arose only on or about 10.11.1969 as claimed by the plaintiff in para 22 of the plaint, or at an earlier point of time.

76. The defendant produced Shri S.B.Lall, Senior Clerk, in the office of the Regional Settlement Commissioner, Jaiselmer House, New Delhi, as DW2. He brought the requisite record pertaining to the property in question. He, inter alia, deposed that the plaintiff-Mirajuddin is not shown as tenant or occupant in any portion of the suit property. In his cross-examination, he deposed that the property was put to auction on 24.09.1960 and the reserve price of the property was fixed at Rs. 45,000/-. The highest bid in auction for the said property was Rs. 22,000/- and that it was made by the plaintiff. He deposed that the memo containing the proceedings of the auction bid purports to bear the signatures of the plaintiff in Urdu. The auction bid was exhibited as Ex.PW1/1. DW2 further deposed that no letter was issued to the plaintiff-Mirajuddin regarding acceptance of his bid as his signatures were obtained on the order passed by the Competent Officer on 05.11.1960 (Ex.PW1/4). Ex.PW1/4 reads as follows:

“A.C.(C) has intimated vide his note dated 05.11.1960 that the Custodian is agreeable to the acceptance of bid for Rs. 22,000/-. Consequently, the bid of the auction-purchaser for Rs. 22,000/- is accepted. The A.P. be informed accordingly and required to appear on 15.11.60. Account be also put up on that day.

Sd/-

C.L.Mahay,

Competent Officer.

Dt. 5.11.60”

77. Thus, it would be seen that the plaintiff was put to notice with regard to acceptance of his bid of Rs. 22,000/-, and he was asked to appear before the Competent Officer on 15.11.1960.

78. PW1-Syed Nawab Hussain, the Reader of the Competent Officer, Jamnagar, Delhi, who was summoned by the plaintiff himself, exhibited the order passed by the Competent Officer on 15.11.1960, in which the Competent Officer records the presence of, inter alia, the plaintiff-Mirajuddin. He passed the order, *“The A.P. now deposit Rs. 19800/- balance of sale price within 15 days. Failing which the property will be put to auction again & E.M. forfeited. (sic). Adj. to 6.12.60.”*

79. PW1 deposed that the signature of plaintiff-Mirajuddin is found on the original Ex.PW1/3. Thus, the plaintiff had notice that the bid of Rs. 22,000/- had been accepted and he had been granted 15 days’ time to deposit the same, and upon his failure to do so, his bid would be forfeited. He was also aware of the fact that the proceedings had been adjourned to 06.12.1960 to await the deposit of the balance amount within 15 days.

80. In the meantime on 17.11.1960 vide Ex.PW1/5, the defendant No. 2 moved an application claiming that she was the real bidder and that Mirajuddin had made the bid on her behalf who, *“has been virtually adopted by your petitioner.”* Thus, defendant No. 2 did not claim that the plaintiff

was her 'adopted' son. The word was qualified by says that he was 'virtually' adopted, meaning thereby, that he was *de facto* a son, or 'like' a son. The decision relied upon by Mr. Srivastava, therefore, **have no** relevance in view of the stand taken by the defendants.

81. On 18.11.1960, the Competent Officer passed an order on the said application of defendant No. 2 ordering that, '*let the applicant and Mirajuddin appear personally or file affidavits in support of the application on 22/11*', vide Ex.DW2/P1.

82. Defendant No. 2 filed her affidavit dated 19.11.1960 (Ex.PW1/6) reiterating her statement made in her application (Ex.PW1/5). On 28.11.1960, the competent officer passed an order accepting the application of defendant No. 2, vide Ex.PW1/7 which reads as follows:

"Mst. Fatima Sultan has filed an application supported by an affidavit that Mirajuddin is a minor and that he gave the bid on her behalf. She has requested that he name be substituted as auction purchaser. I accept her request and substitute her as such. She should now pay the balance amount within a week. Case to come up on 6.12.60 as already orders."

83. The case of the plaintiff is that he was never put to notice of the application of defendant No. 2 seeking her substitution as the auction purchaser. From the record, it appears that he was not put to notice on the said application despite the order dated 18.11.1960 (Ex.DW2/P1) passed by the Competent Officer. Thus, it appears that the substitution of the name of defendant No. 2 as the auction purchaser, indeed, took place behind the back of the plaintiff.

84. However, the matter does not end here. The order dated 28.11.1960 (Ex.PW1/7) passed by the Competent Officer shows that he put up the case on 6.12.1960-which was also the date given to the plaintiff-Mirajuddin in his presence when the Competent Officer passed the order on 15.11.1960(Ex.PW1/3). It appears that the matter was taken up by the Competent Officer on 07.12.1960 when he passed the order Ex.PW1/8, which reads as follows:

“The bid of Mirajuddin for Rs. 22,000/- in respect of property No. IX/739(new) 436(old) was accepted by my order dated 5.11.1960. On the application of Mst. Fatima Sultan, his mother, her name was substituted as auction purchase in place of Mirajuddin by my order dated 28.11.1960. The auction purchaser has paid the entire sale price as per two challans for Rs. 2200/- and Rs. 19,800/- dated 27.9.1960 and 6.12.1960 respectively. Sale in favour of Mst. Fatma Sultan, therefore, stands confirmed, sale certificate be issue on 9.12.1960.”

85. The plaintiff has not explained as to why he did not appear before the Competent Officer on 6.12.1960, and if he did appear, what were the proceedings undertaken by the Competent Officer. He has also not explained as to why he did not appear before the Competent Officer on the following date i.e. 07.12.1960. Had the plaintiff appeared before the Competent Officer on 06.12.1960-the date of which he had prior notice, he would have learnt of the fact of substitution of his name by the name of defendant No. 2 as the auction purchaser, and of the following date. His non-appearance before the Competent Officer on 06.12.1960 cannot be brushed aside lightly, as the same suggests that he actually did not have any interest in the auction sale and he was aware of the substitution of the name of defendant No. 2 as the auction purchaser in his place. Otherwise, there

was no reason for him not to attend the said date fixed by the Competent Officer, when he had been attending the earlier dates fixed by the Competent Officer i.e. on the date of the auction i.e.24.09.1960; on 05.11.1960 when the order Ex.PW1/4 was passed, and; on 15.11.1960 when the order (Ex.PW1/3) was passed.

86. Neither the plaintiff nor his mother bothered to find out as to what transpired on 06.12.1960, or the following day, before the Competent Officer in relation to the auction sale.

87. At this stage itself, I may notice that the plaintiff-Mirajuddin, during his cross-examination, denied his signatures on Ex.PW1/4 and Ex.PW1/3 by claiming that he does not sign in Urdu. Both PW1 and DW2 are independent official witnesses, and there is no reason to disbelieve their testimony when they state that the plaintiff had signed the said orders passed by the Competent Officer. Moreover, the order dated 15.11.1960 (Ex.PW1/3) clearly records the presence of the plaintiff. It was in his presence that he was directed to deposit the balance amount of Rs. 19,800/- within 15 days, and he was put to notice that if he did not do so, property shall be put to auction again and the earnest money forfeited. It was in his presence that the matter was adjourned to 06.12.1960. Thus, he had full knowledge and notice of the aforesaid facts. In fact, his testimony before the court that he does not sign in Urdu is falsified by his own earlier solemn statement recorded before the Competent Officer, wherein he admits that he knows Hindi, Urdu and English and he is able to write in all these languages. The said statement is taken note of hereinafter.

88. Now let us examine the case set up by the plaintiff before the Competent Officer when he moved the application dated 11.10.1971 (mark 'A'). In the said application (which was filed before the court by the plaintiff himself), he claimed that he had purchased the suit property for Rs. 22,000/-; he had completed the entire payment; no sale certificate had been issued to the auction purchaser; *but it appears your office had issued sale/certificate to someone else*; this constitutes a fraud. The Competent Officer was requested to cancel the same "*issued to a wrong person*" and thereafter it be issued to the applicant-Mirajuddin. He alleged a criminal conspiracy. The statement of the plaintiff was recorded by the Competent Officer on 26.10.1971 vide Ex.DW2/P3. In his statement made on solemn affirmation, he stated that he gave a bid of Rs. 22,000/- for the suit property in the year 1960 on 24.09.1960. An amount of Rs. 22,000/- was paid at that time. "*Thereafter I paid down the entire cost of the property*". He stated that his mother is alive whose name is Mst. Mohd. Bi. He stated that he had not been adopted by any lady. On his cross-examination by the court, he, inter alia, stated, "*I do not know any lady by the name of Fatima Sultan wife of Mohd. Vakil. I know Urdu, Hindi & English. I can read & write in these languages. The bid of the property in question was accepted by the Competent Officer in my presence. The entire sale price of Rs. 22,000/- was paid by my mother Mst. Mohd Bi on my behalf.*" He also stated, "*I signed the bid sheet at the time of auction in Urdu.*" He also stated, "*I do not possess any document regarding payment of earnest money or the balance sale price nor any notice of this Court.*"

89. The statement made by the plaintiff before the Competent Officer on 26.10.1971 (Ex.DW2/P3) is at substantial variance with, and contradicted by the averments made by him in his plaint, as well as his testimony recorded as PW3. Even the statement of his mother Mst. Mohd. Bi, taken note of hereinafter, appears to be contradictory with the case of the plaintiff.

90. When the plaintiff gave his solemn statement before the Competent Officer on 26.10.1971 vide Ex.DW2/P3 (in pursuance of his application dated 11.10.1971), he firstly feigned complete ignorance about his acquaintance with defendant No.2-Fatima Sultan wife of Mohd. Vakil. However, in the plaint, he has disclosed his relationship with Mohd. Vakil and Fatima Sultan, his wife. Even his mother Mst. Mohd. Bi, in her solemn statement, disclosed the said relationship and claimed to have reposed faith and confidence in Mohd. Vakil on account of the said relationship. In his statement dated 26.10.1971, the plaintiff states that he paid the entire cost of the property. He does not claim that any part of the cost of the property was paid by Mohd. Vakil, or his wife Fatima Sultan on his behalf, or that his mother Mst. Mohd. Bi had handed over the balance consideration to be deposited with the Competent Officer to Mohd. Vakil. In fact, he stated that, *“the entire sale price of Rs. 22,000/- was paid by my mother Mst. Mohd. Bi on my behalf.”*

91. During his cross-examination as PW3, the plaintiff denies knowledge of Urdu and the fact that he signs in Urdu. However, in his statement (Ex.DW2/P3), he states that he knows Urdu, Hindi and English and that he can read and write in these languages. He also admits in his statement Ex.DW2/P3 that the bid of the property in question was accepted by the

Competent Officer in his presence. I may observe that the bid was accepted vide Ex. PW1/4 dated 05.11.1960. He also admits that he signed the bid sheet at the time of auction in Urdu.

92. The statements of PW1 and DW2 (who are officers from the office of the Competent Officer and who produced the record) that the plaintiff signed Ex.PW1/3 and Ex.PW1/4, therefore, stands duly corroborated, because the statement of PW3 that he did not know or sign in Urdu stands completely belied. In his statement DW2/P3-that he did not possess any document regarding payment of earnest money or the balance sale price, nor any notice of the Court of the Competent Officer, he does not claim that the receipt issued upon deposit of earnest money had been handed over to defendant No.1-Mohd. Vakil, as is claimed by him in his plaint and by his mother Mst. Mohd. Bi while making her solemn statement on commission. He does not explain as to why he is not possessed of the payment receipt of the earnest money, or the balance sale consideration which was produced by the defendants before the Court.

93. I may now take note of the solemn statement of Mst. Mohd. Bi recorded on commission by Mr. Shail Sethi, Advocate/Local Commissioner on 10.11.1974 in the suit. In the said statement, the mother of the plaintiff, inter alia, stated that, *"It was told that the bid would be approved by the Custodian Authority and then the auction will be confirmed."* She stated that, *'Defendant No. 1 is the son of my sister-in-law. I know him by the name of Mohd. Vakil. He came to our house after a month of the bidding'*. She stated that, Mohd. Vakil claimed to know people in the office of the Custodian and that he will get the deal finalized expeditiously. She stated

that Mohd. Vakil informed the plaintiff and the witness Mohd. Bi that the bid of Mirajuddin had been accepted and that the amount be paid for depositing in the office of the Custodian. She claimed to have paid the money in cash. She stated that she did not send Mirajuddin with Mohd. Vakil for depositing the amount as she had full faith in Mohd. Vakil, although, he asked her to send Mirajuddin with him. She stated that Fatima Sultan-defendant No.2 is the wife of defendant No.1-Mohd. Vakil.

94. In her cross-examination she, inter alia, stated that plaintiff Mirajuddin came home to collect the money from her to deposit the earnest money of Rs. 2200/- and he did not give her the receipt for Rs. 2200/-. She stated that she asked the plaintiff, when he returned home, about the receipt of Rs. 2200/- and she was informed that Mohd. Vakil had taken the receipt. She stated that Mohd. Vakil did not accompany the plaintiff at that time. She did not inquire about the reason for giving the receipt to Mohd. Vakil. She stated that the first time Mohd. Vakil came to her house was after a week of the bid being made.

95. Pertinently, Mst. Mohd. Bi, in the earlier part of her solemn statement, claimed that defendant No. 1 came to her house after a month of the bidding. There was a talk about the bid in question with him whereupon he claimed to know some people in the office of the Custodian and offered help to get the deal finalized expeditiously. However, in the later part of her statement under cross-examination, she stated that when the plaintiff returned home after auction and she asked for the receipt of Rs. 2200/- she was informed that defendant No.1-Mohd. Vakil had taken the same. She also stated that Mohd. Vakil – defendant No. 1 had not accompanied the plaintiff at that

time, and she did not ask the reason for giving the receipt to Mohd. Vakil. Thus, at one place, Mst. Mohd. Bi claimed that defendant No.1 Mohd. Vakil learnt of the transaction entered into by the plaintiff after about a month of the bid being made when he came to the residence of the plaintiff and his mother, while on the other hand, she claimed that Mohd. Vakil had taken the receipt of the earnest money deposit of Rs. 2200/- soon after the said earnest money had been deposited and the receipt issued. No reason has been given for the alleged delivery of the receipt of Rs. 2200/- to Defendant No.1. This version of the plaintiffs mother Mst. Mohd. Bi is at variance with the pleading of the plaintiff in his amended plaint, wherein he states;

*“that sometime in the middle of October, 1960, the defendants who are related to the plaintiff and his mother came to meet them at their residence and **in course of conversation they came to know that the plaintiff has given a bid of Rs. 22,000/- and the same awaits the approval and acceptance by the office of the Custodian Evacuee Property.**”*

[emphasis supplied]

96. Apart from the statements of the plaintiff and his mother-Mst. Mohd. Bi with regard to the involvement of Mohd. Vakil; his engagement for the purpose of getting the bid accepted; for deposit of the balance consideration, and; of the fact that she gave the balance amount of Rs. 19800/- to Mohd. Vakil for deposit by him, there is no other independent or credible evidence brought on record by the plaintiff. Thus onus to prove all of these aforesaid facts was on the plaintiff. No doubt, defendant No. 2 did not herself appear as a witness in support of the defence set up by the defendants. Instead, her son-the appellant, appeared as a witness. He claimed personal knowledge and also claimed to hold a power of attorney from her mother/defendant No.

2. A reading of his evidence does not inspire confidence. The same has to be ignored.

97. However, the plaintiff can take only limited advantage of defendant No. 2 not appearing as her own witness. The plaintiff, to succeed, has to prove his own case and stand on his own feet. The onus was on him to prove fraud alleged by him. However, the plaintiff has failed to establish the alleged fraud.

98. On examination of the aforesaid evidence which, unfortunately, was not taken into account either by the trial court or by the first appellate court, in my view, it cannot be said that the plaintiff has been able to establish the fraud alleged against the defendants. The conduct and statements of the plaintiff militate against his claim of the alleged fraud. In fact, the plaintiff's stands discredited on account of the serious contradictions in his versions. The first statement of the plaintiff made before the Competent Officer is the most important one. Before the Competent Officer, he did not claim that he and his mother had been talked into involving the defendant No. 1 for the purpose of acceptance of the bid, or deposit of the balance amount of Rs. 19,800/-. In fact, he feigned complete ignorance about the defendants even though, subsequently in his plaint, the plaintiff, his mother Mst. Mohd. Bi-in her solemn statement, admitted that the defendants are related to him. In his first solemn statement, he admits and acknowledges his knowledge of Urdu, Hindi and English-both written and spoken. However, when he is confronted during his cross-examination as PW3 with his signatures on the various proceedings of the Competent Officer, he claims that he does not write in Urdu. As noticed above, his subsequent statement is belied by his

first statement, wherein he also admits his signature on the bid sheet at the time of auction in Urdu. Denial by the plaintiff of his signatures on the proceedings of the Competent Officer cannot be accepted also for the reason that two independent witnesses who produced the record attributed the signatures on the proceedings to the plaintiff.

99. The plaintiff has not explained his conduct in not depositing the balance consideration of Rs. 19800/- himself, or through his mother, and his not appearing before the Competent Officer on the date fixed for further proceedings i.e. 06.12.1960. Why did the plaintiff not appear on 06.12.1960 before the Competent Officer if he was the true bidder and not defendant No.2? Why did he suddenly lose interest in the matter? Why did he not deposit the amount of Rs. 19800/- within 15 days of the passing of the order dated 15.11.1960 to save the forfeiture of his bid to secure the suit property in his own name? Why did he not accompany defendant No. 1 to deposit the balance amount of Rs. 19800/- when, allegedly defendant No. 1 took the money from the mother of the plaintiff, despite the fact that he had earlier been visiting the office of the Competent Officer regularly. These questions have not been answered by the plaintiff and thus the charge of fraud leveled against the defendants gets accordingly weakened. Pertinently, when the application of defendant No. 2 was taken up for consideration by the Competent Officer, and orders were passed thereon initially, defendant No. 2 was not required by the said order to get notice issued to the plaintiff. Even if there was an irregularity, the same was on the part of the office of the Competent Officer, who failed to ensure that notice should be issued to the plaintiff and to further ensure that he is represented, before the

substitution of the name of the plaintiff as the auction purchaser by the name of defendant No. 2 is ordered. However, in my view, the said irregularity cannot be said to be fatal to the substitution of the name of plaintiff by that of defendant No. 2 as the auction purchaser. This is, because, the Competent Officer had kept the matter on 06.12.1960 for further proceedings, and the plaintiff was well aware of the said date. He had to deposit the amount of Rs. 19800/- before that date. If he was completely oblivious of the application made by defendant No.2 vide Ex.PW1/5, and the order passed thereon on 28.09.1960 vide Ex.PW1/7, he would have proceeded to deposit the amount of Rs. 19800/- in his own name before the Competent Officer. However, he failed to do so and the reason, therefor appears to be the substitution of the name of defendant No.2 as the auction purchaser in place of the name of the plaintiff. If the plaintiff deposited the initial earnest money deposit of Rs. 2200/-, he has not explained as to why he was not possessed of the receipt of the said amount and how defendant No. 2 came to possess the same. The version of the plaintiff with regard to defendant No. 1 visiting his residence; of defendant No. 1 offering to help the plaintiff and his mother to get the plaintiff's bid confirmed; and on that pretext taking the receipt of Rs. 2200/- is completely unsubstantiated. Apart from bald statements of plaintiff and his mother, there is nothing at all to support the said version which has been denied by the defendants. In fact, the evidence led by the plaintiff itself is contradicted in this regard. As already noticed above, while on the one hand, the plaintiff's mother in her solemn statement stated that the said receipt for Rs. 2200/- was delivered to defendant No.1 soon after the amount was deposited, on the other hand, the plaintiffs stated

in his plaint that defendant No. 1 learnt of the transaction in the middle of October, 1960 when he came to the plaintiff's residence.

100. The failure of the trial court as well as the first appellate court to even take note of the aforesaid relevant aspects, in my view, has resulted in completely perverse findings being returned that the defendants had played a fraud upon the plaintiff. The conduct of the plaintiff does not support such a conclusion, as noticed above. The said finding, therefore, cannot be sustained and is set aside.

101. Even if the story set up by the plaintiff with regard to the involvement of Mohd. Vakil towards payment of the balance consideration were to be accepted, the said amount was deposited in the office of the Competent Officer on 06.12.1960. The ingredients for invocation of Section 17 of the Limitation Act are also not present in the present case. Firstly, the plaintiff did not appear before the Competent Officer on 06.12.1960. Therefore, he did not exercise reasonable diligence on the said date. The plaintiff claims that he visited the office of the Competent Officer-though he does not disclose the date when he did so. He claims that he was informed that the sale certificate had not been made, whereas the sale certificate had already been issued in favour of defendant No.2 on 09.12.1960. No reason has been furnished by the plaintiff as to why the officers in the office of the Competent Officer would mislead him, or wrongly inform him that the sale certificate had not been issued-when the same had actually been issued on 09.12.1960 in favour of the defendant No.2. Pertinently, he does not disclose the name of the officer(s) who had misled him into believing that no sale certificate had been issued. When officers from the office of the

Competent Officer appeared as witnesses, namely, PW1 and DW4, neither a suggestion has been given to them that he had been misled by anyone in the office of the Competent Officer on the basis of a false statement with regard to non-issuance of the sale certificate, nor he cross-examined the said witnesses on the said aspect. From his own statement, it is evident that the plaintiff did visit the office of the Competent Officer to make inquiries with regard to issuance of sale certificate. Once the bid of the plaintiff had been accepted in his presence and to his knowledge, vide Ex.PW1/4 on 05.11.1960, there was no reason for the plaintiff or his mother to keep quite about the whole affair and remains secretive thereabout. Their story that defendant No. 1 had advised them not to talk about bid to anyone, therefore, falls to the ground. Unfortunately, all these aspects have been completely ignored by the two courts below. Since on the face of it, the suit appears to be barred by limitation, the onus fell on the plaintiff to establish that the same was not barred by limitation. It is in this background that while framing the issues, on the issue of limitation, the onus was placed upon the plaintiff since the issue framed was, ‘*if the suit is within time? OPP*’

102. The plaintiff, by claiming that he learnt of the alleged fraud and the sale certificate upon inspection of the record through his Advocate in 1969-70, tried to bring the suit within time. However, there is no explanation as to why he did not take any legal action after 09.12.1960-when the sale certificate was issued in favour of defendant No.2. The defendants, and in particular defendant No.2, were in occupation of the suit property and exercised their rights as owners in broad daylight. The plaintiff would have been alerted when the defendants started occupying, and exerting their rights

as owners in respect of the suit property, and would have questioned the same when it happened from December, 1960 onwards. However, the plaintiff did nothing even at that stage. This also shows that he was aware of the fact that the true owner was defendant No.2-on account of her being substituted as the auction purchaser, and on account of the fact that she had deposited the sale consideration and got the sale certificate issued. The plaintiff was about 15-16 years old (as stated by him during his statement) when he gave the bid in September, 1960. Thus, he would have attained the age of majority in 1962-63. Consequently, the disability attaching to the plaintiff on account of his minority having ceased, he was bound to bring the action within three years of his attaining majority. However, he failed to do so.

103. Admittedly, the plaintiff and even her mother Mst. Mohd. Bi did not take any action for years-on-end, and engaged a lawyer to make inquiries only in 1969. The plaintiff claimed to have derived knowledge of the so called fraud on 10.11.1969. This claim of the plaintiff cannot be accepted in view of the aforesaid discussion. Accordingly, the second substantial question of law is answered in favour of the appellant and against the respondent/plaintiff and it is held that the suit was not instituted within limitation and that it was barred by limitation.

104. In view of the aforesaid discussion, the present appeal is allowed and the impugned judgment and decree passed by the first appellate court i.e. the learned Additional District Judge, Delhi, Fast Track Court, New Delhi, in RCA No.22/06/87 dated 26.10.2006 as well as the judgment and decree passed by the learned Sub Judge Ist Class, Delhi, in Suit No. 451/79 dated 16.02.1987 are set aside and the suit of the plaintiff is dismissed under

Section 34 of Specific Relief Act as well as on account of the bar of limitation. The appellant shall be entitled to costs throughout.

VIPIN SANGHI, J.

JULY 11, 2016