

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.222 of 2010**

1. Smt. Surajbai, aged 64 years, W/o Late Shri Chandrika Prasad, caste Kachhi
2. Devishankar, aged 40 years, S/o. Late Shri Chandrika Prasad, caste Kachhi
3. Smt. Rameshwari, aged 35 years, D/o Late Shri Chandrika Prasad, caste Kachhi
4. Smt. Ranjita, aged 30 years, D/o Late Shri Chandrika Prasad, caste Kachhi
5. Smt. Ruhibai, aged 25 years, D/o Shri Chandrika Prasad, caste Kachhi,
all R/o near Bus Stand, Telephone Exchange Road,
District-Bilaspur (CG)

---- Appellants/Plaintiffs**Versus**

1. Chhedilal Shukla (died) through LR's
 - 1(a) Ashok Kumar Shukla, aged about 55 years, S/o Late Chhedilal Shukla,
 - 1(b) Santosh Kumar Shukla, aged about 52 years, S/o Late Chhedilal Shukla,
 - 1(c) Shiv Kumar Shukla, aged about 50 years, S/o Late Chhedilal Shukla,
 All R/o Village Nevra, P.O. Nevra, Tahsil Takhatpur, Distt. Bilaspur (CG)
2. Arun Singh Thakur, Aged 38 years, S/o Late Shri Buddha Singh Thakur, R/o Tifra, Near Kali Mandir, Tahsil & District-Bilaspur (CG)
3. Surendra Kashyap, aged 54 years, S/o Shri Umanath, R/o Behind Ajit Hotel, Telipara, Bilaspur (CG)
4. Umanath Kashyap (died and deleted)
5. Smt. Urmila Bai (dead) Legal representative W/o Laxmi-narayan, D/o Gurucharan, Aged 60 years, village-Sendri, Tahsil & District-Bilaspur (CG) (deleted)
6. State of Chhattisgarh, Through Collector, Bilaspur (CG)
7. District Registrar, Collector of Stamp, Bilaspur (CG)

---- Respondents/Defendants

For Appellants/Plaintiffs:

Mr.Ravindra Agrawal, Advocate

For Respondent No.1(a) to 1(c):

Mr.Shailendra Tiwari, Advocate on behalf
of Mr.Sourabh Sharma, Advocate

For Respondent No.2:

Mr.Anurag Dayal Shrivastava, Advocate

For Respondent No.3:

Mr.Ratnesh Kumar Agrawal, Advocate

For Respondents No.6 & 7/State:

Mr.Ravi Bhagat, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

03/02/2021

1.The substantial questions of law involved, formulated and to be answered in this second appeal preferred by the appellants/plaintiffs are as under:-

"1. Whether both the Courts are justified in dismissing the suit of plaintiffs barred by limitation particularly when no plea of limitation has been taken by the defendants by recording the finding which is perverse to the record ?

2. Whether both the Courts are justified in dismissing the suit after holding that defendant No.2, Arun Singh Thakur, has no power to execute the sale deed in favour of defendant No.1, Chhedilal Shukla, as the power of attorney has already been revoked by recording the finding which is perverse to the record ?"

[For the sake of convenience, the parties would be referred hereinafter as per their status shown

and ranking given in the suit before the trial Court].

2. The plaintiffs herein filed a suit for declaring the sale deed dated 27.12.2000 (Ex.P-1) (which was subject to proceeding under Section 47A of the Indian Stamp Act, 1899 before the Collector of Stamps on that day) executed by defendant No.2 in favour of defendant No.1 on the strength of power of attorney dated 7.12.1996 (Ex.P-7) (registered on 12.12.1996) executed by the plaintiffs in favour of defendant No.2 stating inter-alia that the plaintiffs have already revoked the power of attorney executed in favour of defendant No.2 on 30.12.1999 (Ex.P-6) and therefore, defendant No.2 has no right and authority to alienate the suit property in favour of defendant No.1.

3. Resisting the suit, defendant No.1 remained ex-parte, whereas defendant No.2 filed his written statement and denied the averments made in the plaint stating inter-alia that the alleged revocation has not been informed to him and he has sold the suit land for and on behalf of the plaintiffs, as such, the suit is liable to be dismissed.

4. The trial Court upon appreciation of oral and documentary evidence available on record, by its judgment and decree dated 19.12.2008, dismissed the

suit holding that power of attorney executed by the plaintiffs in favour of defendant No.2 has already been revoked on 30.12.1999 and defendant No.2 has no right and authority to alienate the said property in favour of defendant No.1 and further held that since sale deed was not registered on that day, it was subject to proceeding under Section 47A of the Indian Stamp Act, 1899 (hereinafter called as 'Act of 1899') and since it has not been registered on that day, the suit is pre-mature and also held that the plaintiffs came to know about the sale deed on 27.12.2000 (Ex.P-1) and the suit has not been filed within three years from the date of sale deed dated 27.12.2000 and as such, Article 58 of the Limitation Act, 1963 (hereinafter called as 'Limitation Act') would be applicable and the suit as filed on 13.5.2004 is barred by limitation. The plaintiffs preferred first appeal before the first appellate Court questioning the judgment and decree of the trial Court. The said appellate Court by the impugned judgment and decree agreed with the findings of the trial Court particularly with regard to limitation and dismissed the appeal leading to filing of this second appeal under Section 100 of the CPC, in which two substantial questions of law have been formulated, which have been

set-out in the opening paragraph of this judgment for sake of completeness.

5. Mr. Ravindra Agrawal, learned counsel for the appellants/plaintiffs, would submit that question of limitation is mixed question of law and fact and therefore, in absence of any pleading with regard to applicability of Article 58 of the Limitation Act, the suit could not have been dismissed as barred by limitation particularly when the sale deed dated 27.12.2000 (Ex.P-1) was not registered and Section 47 of the Act of 1899 would not apply and it was not registered till the suit was filed on 13.5.2004, therefore, the date of accrual of cause of action as per Article 58 of the Limitation Act has to be pleaded specifically and unless it is pleaded and established, the suit could not have been dismissed by both the Courts below holding that the suit is barred by limitation, as such, the judgment and decree of both the Courts below deserve to be set-aside.

6. On the other hand, learned counsel for the defendants would support the impugned judgment and decree and submit that the plaintiffs came to know about the said sale deed on 27.12.2000 itself and therefore, the suit filed on 13.5.2004 was apparently barred by Article 58 of the Limitation Act.

7. I have heard learned counsel for the parties, considered their rival submissions made herein-above and also went through the records with utmost circumspection.

8. Both the Courts below have recorded a finding that power of attorney executed by the plaintiffs in favour of defendant No.2 has already been revoked on 30.12.1999 (Ex.P-6) and on the date of sale i.e. 27.12.2000 (Ex.P-1) defendant No.2 has no right and authority to alienate the suit land in favour of defendant No.1, but further held that since the plaintiffs came to know about sale deed on 27.12.2000 (Ex.P-1) and the suit having been filed on 13.5.2004 for declaring the sale deed to be null and void apparently beyond three years from the date of accrual of cause of action i.e. 27.12.2000, it is hit by Article 58 of the Limitation Act.

9. Article 58 of the Limitation Act states as under:-

	Description of suit	Period of Limitation	Time from which period begins to run
58.	To obtain any other declaration	Three years	When the right to sue first accrues.

10. The Supreme Court in the matter of **Khatari Hotels Private Limited v. Union of India and Anr.**¹ has laid

¹ AIR 2011 SC 3590

down the law with regard to starting point of limitation under Article 58 of the Limitation Act and held that a suit based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. It was held as under:-

"27. While enacting Article 58 of the 1963 Act, the legislature has designedly made a departure from the language of Article 120 of the 1908 Act. The word 'first' has been used between the words 'sue' and 'accrued'. This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued."

11. It is not in dispute that none of the defendants have taken a plea that the suit is barred by limitation. It is the trial Court itself by invoking and with the aid of Section 3 of the Limitation Act, proceeded to consider and held that the suit is barred by limitation as legal position is quite settled and cannot be disputed, but under Article 58 of the Limitation Act, the question as to the date on which the right to sue accrues is question of fact. The relevant facts have to be pleaded. Adversary must be given an opportunity to know, understand and make a

plea of limitation founded on facts. Such fact has to be pleaded. Apart from the fact that plea of limitation is mixed question of law and fact and therefore, it has to be pleaded and to be established though in the given case, if the suit is apparently barred by limitation, then by virtue of the provisions contained in Section 3 of the Limitation Act, the suit can be dismissed, but the date on which the right to sue accrues is pure and simple question of fact and therefore, the relevant facts have to be pleaded.

12. In the instant case, there is no whisper about the date on which the right to sue accrues in favour of the plaintiffs. According to the plaintiffs, when their objections were overruled by learned Collector of Stamps and they were given liberty to proceed in accordance with law, then they decided to file a suit on 31.5.2004, whereas according to the defendants, the suit ought to have been filed within three years from the date of execution of sale deed dated 27.12.2000 (Ex.P-1) as the plaintiffs came to know about sale deed on that day only, as such, there is serious dispute between both the parties qua the date on which the right to sue first accrues in favour of the plaintiffs to file a suit for declaring the sale deed dated 27.12.2000 as null and void.

13. In absence of pleading and supporting evidence, this Court has no advantage of looking to the pleading and evidence on the question of limitation, which is the substantial question of law that has been framed by this Court while entertaining the instant second appeal.

14. In that view of the matter, I deem it appropriate to set-aside the finding of both the Courts below on the question of limitation and remit it to the first appellate Court to give an opportunity to the parties to amend their pleadings confining to the question of limitation and thereafter to that extent they are also at liberty to file documents and to lead evidence and thereafter to decide on the question of limitation and thereafter on the basis of other findings already recorded, would decide the first appeal afresh.

15. Consequently, the second appeal is allowed and judgment & decree of both the Courts below with regard to finding on issue of limitation is set-aside. Rest of the findings would remain as it is. The parties are directed to appear before the first appellate Court on 15th February, 2021. No notice would be required and the parties will appear suo moto as undertaken before this Court and file amendment application, necessary amendment will be allowed and pleadings will be filed

on or before 19th February, 2021 and parties will lead evidence up to 9th April, 2021 and therefore, question of limitation will be decided afresh by the first appellate Court and depending upon that, the first appellate Court will decide the appeal afresh in accordance with law as other findings of two Courts below are not being disturbed.

16. The second appeal is allowed to the extent indicated hereinabove by answering the substantial questions of law in favour of the plaintiffs and against the defendants. Records be sent to the first appellate Court forthwith. No cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-