

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**SECOND APPEAL No.402 of 2000**

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1. Shree Kishun Rai Son of Late Sita Ram Rai Resident of Village- Semaria Bijay Rai Ke Tola Pokhari, Post Office and Police Station- Revilganj, District- Saran.
2. Butan Rai, Son of Late Sita Ram Rai Resident of Village- Semaria Bijay Rai Ke Tola Pokhari, Post Office and Police Station- Revilganj, District- Saran.
3. Dalmati Devi alias Lalmati Devi alias Lalmuni Devi, Wife of Satya Narayan Rai Resident of Village- Semaria Bijay Rai Ke Tola Pokhari, Post Office and Police Station- Revilganj, District- Saran.

... .. Appellant/s

Versus

- 1.1. Ram Dulari Devi @ Dulari Devi Wife of Jugal Rai Resident of Village- Patiya, Bijay Rai Ka Tola, P.O. and P.S.- Revilganj, District- Saran.
- 1.2. Raj Kumar Rai S/o Jugal Rai Resident of Village- Patiya, Bijay Rai Ka Tola, P.O. and P.S.- Revilganj, District- Saran.
2. Jugal Rai alias Jugeshwar Rai, Son of Deoraj Rai (deceased), Resident of Village- Semaria Bijay Rai Ke Tola Pokhari, Post Office and Police Station- Revilganj, Pergana Manjhi, District- Saran.

... .. Respondent/s

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**Appearance :**

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| For the Appellant/s  | : | Mr. Binod Kumar Singh, Advocate<br>Mr. Bipin Kumar, Adv.ocate                   |
| For the Respondent/s | : | Mr. Mahesh Narayan Parbat, Sr. Advocate<br>Mr. Ved Prakash Srivastava, Advocate |

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**CORAM: HONOURABLE MR. JUSTICE KHATIM REZA**  
**CAV JUDGMENT**

**Date : 22-12-2023**

This Second Appeal has been filed against the judgment and Decree dated 25-07-2000, passed by the learned 1st Additional District Judge, Saran, in Title Appeal No. 43 of 1988, whereby the learned lower appellate Court has reversed the judgment and decree dated 29-02-1988 passed in Title Suit No. 12 of 1984.



2. The case of the plaintiffs-appellants in short is that one Lalit Bhagat Rai had five sons, viz., Ram Dahin Rai, Badri Rai, Ram Autar Rai, Ramratan Rai and Deoraj Rai, who was father of the husband of the original plaintiff viz., Pan Kuer, who had acquired some lands from his own income. During the lifetime of Lalit Bhagat Rai, Deoraj Rai died in the year 1959, leaving behind his widow, namely, Pan Kuer (plaintiff) and a son Jugal Rai (defendant No.1). In the life time of said Lalit Bhagat Rai, when the Deoraj Rai was alive, the said Lalit Bhagat Rai partitioned the property, which was acquired by him by way of family arrangement. All sons got 1/5th share and had started residing separately. The plaintiff is the widow of Deoraj Rai and mother of Defendant No. 1. Defendant Nos. 2 and 3 are the alleged vendees of Defendant No. 1. The further case of the plaintiff is that Deoraj Rai, husband of the original plaintiff, was in police service and he died in the year 1959, leaving behind plaintiff and his minor son, viz., Jugal Rai, (defendant no.1) and after the death of husband, the plaintiff became the '*karta*' of her family and looked after her son (defendant no.1) and carried business in the name of her husband and constructed a '*Pucca*' house. In the year 1965, Defendant No.1 joined the army service, but he never sent a single farthing to the plaintiff,



during the course of his service. The further case of the plaintiff is that she got marriage of his son solemnized with one Lilawati Devi. But, her son had become addicted to ganja, bhang and wine etc., and became a man of bad character, and he was not taking care of plaintiff and was issueless and due to his bad habits, his wife Lilawati deserted him and solemnized another marriage. He was dismissed from his service in the year 1972. It has further been stated that Lalit Bhagat Rai had acquired 01 *Bigha* 14 *dhurs* of land appertaining to *Khata* No. 376, Plot No. 700 in Mauza -Semaria, by registered sale deed dated 23-12-1948. During the life time of Lalit Bhagat Rai, this land was also partitioned amongst the sons of Lalit Bhagat Rai by metes and bounds, out of which the plaintiff got 1/5th share of her husband (deceased), namely, Deoraj Rai and, accordingly, she has been in possession of the same. Further case of the plaintiff is that on 25-01-1984, while the plaintiff was working in her field, she was objected by Defendant Nos. 2 and 3, because her son Jugal Rai had executed a sale deed on 30-12-1974, regarding suit land in favour of the Defendant Nos. 2 and 3. Having got knowledge about the same, the plaintiff inquired the matter from her son Jugal Rai, who denied the same and, on inquiry, from Registry Office, she became aware that a



sale deed was executed, which was forged and fabricated one in the manner as described in the plaint. It is further pleaded that the sale deed dated 30-12-1974 was not executed by Jugal Rai and the scribe, identifying witness and other witnesses, are men of the camp of Defendant Nos. 2 and 3. The further case of the plaintiff is that Jugal Rai was never in need of Rs. 3,000/- for repair of his house and for purchasing buffalo. The plaintiff herself constructed the house by money given by her husband and she maintained the family by cultivating her lands and selling milk.

3. It has been pleaded that Jugal Rai was impersonated by somebody else for admitting the execution of his sale deed and not a single farthing was paid to him and the thumb impression, on the alleged sale deed, is false and fabricated. The defendants never came in possession over the suit land nor any title accrued to them on the basis of the said sale deed. No consideration money was paid to Defendant no.1. It has further been contended that several times the plaintiff requested the defendants to execute deed of *Ladavi* in her favour regarding the suit properties, but the defendants never agreed to the same. Lastly, the plaintiff requested to the defendants on 28-02-1984, to which they did not agree, hence the necessity of the suit.



4. On the basis of aforesaid facts, plaintiff has prayed for setting aside the sale deed dated 30-12-1974 executed by Defendant No.1, in favour of Defendant Nos. 2 and 3 and, for confirmation /recovery of possession over the land in Suit.

5. On Summons, Defendant Nos. 2 and 3 have appeared and filed joint written statement. Apart from technical objection, the factum of partition amongst the sons of Lalit Bhagat Rai and the plaintiff is the wife of Deoraj Rai, have been admitted by these defendants. These defendants have denied the fact that after the death of Deoraj Rai the plaintiff became the *Karta* of the family and looked after the affairs of the family and carried business of buffalo by the money received from her husband Deoraj Rai and she constructed house, rather Defendant No.1 became the *Karta* of the family, after the death of his father Deoraj Rai and in the capacity of *Karta* of the family, he looked after the family affairs and his mother. It is further submitted that the Defendant No.1 was neither characterless nor his wife left him nor he was addicted to *ganja*, *bhang* and wine etc.,.They have denied the fact of dismissal from service of Defendant No.1. It is contended that they have asserted that the Defendant no.1 became *karta* of the family. The plaintiff never worked in the field nor carried any business of buffalo. They



have denied the possession of the plaintiff over the suit land. Further denied that the plaintiff, for the first time, came to know on 25-01-1984 about the sale deed in- question and it has also been denied by these defendants that she called her brother and enquired from the Registration Office rather, according to these defendants, the plaintiff had knowledge of the sale deed from very beginning and defendant no. 1 had executed the sale deed as the karta of the family in favour of these defendants to the knowledge and with the consent of his mother (the plaintiff) for legal necessity and these defendants have been coming in possession as vendees of the land since the date of execution of the sale deed. Defendant No.1 was in need of Rs. 3000/- for repairing of his house and for purchasing buffalo. They have denied the fact that the plaintiff has purchased the buffalo from her own money. It is further contended that the buffalo was purchased from the consideration money of the sale deed in- question. The defendants have further contended that Rs. 400/- was paid to Defendant no.1 before execution of the sale deed and the rest Rs. 2600/- was paid at the time of exchange of Registration receipt. Further case of the defendants is that defendants fell in need of money for repairing of house etc., and for this they executed a sale deed in favour of plaintiff, in



which, it was agreed that the consideration money would be paid at the time of exchange of the Registration receipt and at that time, she will get possession over the land, but as the plaintiff did not pay the consideration money of the sale deed, these defendants themselves withdrew the sale deed from the Registration office and even when, the plaintiff did not pay the consideration money, on demand, then these defendants got the sale deed cancelled. Lastly, it has been contended that the defendants are in possession of the suit land on the basis of sale deed dated 30-12-1974.

6. However, it is pertinent to mention that despite the summons, Jugal Rai (Defendant No.1) has not appeared in the Suit nor filed any written statement.

7. On analyzing the evidence and materials on record, the learned trial Court has held that the plaintiff was dealing with the family affairs in the capacity of '*Karta*' at the time of execution of the sale-deed in question. The sale deed dated 30-12-1974 executed by Jugal Rai (Defendant No.1) was in favour of Murti Devi ( Defendant No.2 only) and not in favour of Sita Ram Rai ( Defendant No.3), who was husband of Defendant No. 2 **(Exhibit-B)**. The learned Trial Court has further held that plaintiff has not disclosed in the plaint about the date of



dispossession which has not been corroborated by any material evidence. Thus, the relief for recovery of possession is also not sustainable. The learned Trial Court has further held that the suit stands barred under the provisions of the Limitation Act. So far sale- deed dated 30-12-1974 is concerned, the plaintiff got knowledge on 25-01-1984 is not correct, rather it appears from the plaintiff's own admission, in her evidence, that she had knowledge of the sale deed just after one year of its execution. Therefore, the plaintiff has got no valid cause of action of the suit. Therefore, the plaintiff is not entitled to any relief in the suit. Accordingly, the Suit was dismissed.

8. Being aggrieved, the plaintiff preferred Title Appeal No. 43 of 1988 against the judgment and decree passed by the learned Trial Court on 29-02-1988. After hearing the parties, the learned lower Appellate Court allowed Title Appeal and set aside the judgment and decree, and decreed the Suit in favour of the plaintiff.

9. Against the said judgment and decree, the heirs of defendant Nos. 2 and 3 have filed the present Second Appeal, which was admitted on 21-04-2009, the following substantial question of law was framed, which are as follows:-

*1) Whether the court of appeal below while reversing the judgment and decree of the trial court*



*was justified in decreeing the suit by mis-interpretation of law of adverse possession under the provision of Limitation Act?*

*2) Whether the learned trial court having dismissed the suit on the ground of limitation only, the learned court of appeal below was justified in decreeing the claim only by reversing the judgment and decree of the trial court with regard to limitation and adverse possession without going into the other points and issues involved in the case?*

10. The learned counsel for the appellants submits that the learned appellate court has failed to consider that the suit for the relief of declaring that the registered sale deed 30-12-1974, executed by Jugal Rai in favour of Murti Devi, is forged, fabricated and baseless. The plaintiff sought further reliefs that defendants have got no title over the suit land on the basis of registered sale deed dated 30-12-1974. The plaintiff did not pray for declaration of title or confirmation of possession over the suit land, as the plaintiff has averred that she is in possession over the suit land. Later on, she amended her plaint by order dated 23-02-1988 by adding another relief 1 (ka) in the plaint for confirmation of possession and, alternatively, if she found dispossessed then recovery of possession. No relief of declaration of her title over the suit property was claimed by her



even by way of amendment and, no *ad valorem* court fee was paid for such relief. The learned counsel for the appellants further submits that from perusal of the original unamended plaint, it is manifest that suit was filed only for declaring the sale deed dated 31-12-1974, executed by Jugal Rai in favour of Murti Devi, is forged, fabricated, baseless and inoperative and on the basis of the said sale deed, the defendants have got no title over the suit property without seeking relief of declaration of title and confirmation of possession or any other consequential relief in the suit. In the aforesaid facts, the Suit was fully covered under Articles 56 or 58 of the Limitation Act, 1963 ( for brevity Act, 1963). So far relief of confirmation of possession/ recovery of possession sought on 23-02-1988, which was allowed by order dated 23-02-1988, the original plaintiff did not claim a relief of declaration of her title with respect to the suit land. Furthermore, the suit was decided on 29-02-1988 i.e., immediately, after the amendment. But originally, the suit was filed only for declaring the said sale deed to be forged, fabricated, baseless and inoperative and defendants have no title over the suit land and cost of the suit, which was barred, in view of Article 56 of the Act of 1963, as the period is only three years even if Article 58 of the Act of 1963, provides that



period is three years, the Court has wrongly applied Article 65 of the Act of 1963, which does not apply, because no relief of declaration of title was sought by the plaintiff. If the main relief of declaration of title is not sought then the consequential relief of either confirmation or recovery of possession, cannot be granted. The plaintiff, in her deposition, at paragraph 9 of her cross-examination, has admitted that she got knowledge about the registration of impugned sale deed within one year and thereby she came to know about the registered sale deed by December, 1975. Therefore, the suit is clearly barred by the law of Limitation in the year 1984. The learned Trial Court has rightly gave the findings that the Suit is barred by law of limitation. Reliance in this regard has been placed in the case of ***Ahmedsaheb (Dead) by Lrs. & Ors. V. Syed Ismail*** reported in ***(2012) 8 SCC 516*** wherein the Hon'ble Apex Court held that *"it is needless to emphasize that admission of a party in the proceedings either in the pleadings or oral is the best evidence and the same does not need any further corroboration"*. Reliance has also been placed in the case of ***Thiru John V. The Returning Officer & Ors.*** reported in ***AIR 1977 (SC) 1724***. The Hon'ble Apex Court in paragraph No. 15 of the judgment has held as follows :



“It is well settled that a party’s admission as defined in Secs 17 to 20 fulfilling the requirement of Section 21. Evidence Act, is substantive evidence proprio vigore. An admission.

If clearly and unequivocally made, is the best evidence against the party making it and though not conclusive, shifts the onus on to the maker on the principle that “ what a party himself admits to be true may reasonably be presumed to be so and until the presumption was rebutted the fact admitted must be taken to be established”.

11. The learned counsel for the appellants further submits that the learned appellate court has wrongly held that the plaintiff is entitled to recovery of possession and reversed the findings of the learned Trial Court without scrutinizing the plaint as well evidence in the appeal. It is further submitted that the plaintiff had never either pleaded or deposed that she was wrongly dispossessed by the defendant Nos. 2 and 3. There is no pleadings even by amendment in the year 1988 that the plaintiff- respondent was wrongfully dispossessed by defendant-appellant even on 05-05-1987 or any subsequent date. She never deposed or filed any petition in the Court stating therein that she has been wrongly dispossessed from the suit land . Learned counsel for the appellants further submits that the lower Court ought to have held that plaintiff is not entitled for recovery of possession as the plaintiff has failed to aver and prove a case of wrongful dispossession from her suit land and herself admits in



her deposition, that defendants are in possession. Learned counsel for the appellants submitted that the findings of the trial court that plaintiff-respondent, who is widow and mother of defendant no.1 is *Karta* of joint family ought to have been interfered by the lower court because it is a settled law that a widow/ woman of a Hindu joint family cannot be *Karta* in that family. The reliance has been placed in the case of **Commr. of Income-Tax, Madhya Pradesh, Nagpur and Bhandara Nagpur V. Seth Govindram Sugar Mills** reported in *AIR 1966 ( SC) 24* , wherein *the Hon'ble Apex Court has held "under Hindu Law coparcenership is a necessary qualification for the managership of a joint Hindu family. A widow is not a coparcener, she has no legal qualifications to become the manager of a joint Hindu family. A widow of a coparcener cannot, therefore, be a karta of the joint Hindu family."*

12. He has further relied upon a decision reported in AIR 1978 Pat 258 (**Sahdeo Singh and others vs Ram chhabila Singh and others**) wherein this court has held "*the question is whether the widow could be a Karta of joint family under the Hindu law. Coparcenership is a necessary qualification for the managership of a joint Hindu family and a widow is, admittedly, not a coparcener.* In view of the fact that original plaintiff failed



to prove that defendant No.1 is a lunatic, she cannot be a 'Karta'. It is submitted that the defendant No. 2 has claimed title over the suit land, on the basis of registered sale deed executed by the son of the plaintiff, defendant Nos. 2 and 3 had not claimed title by adverse possession as the suit was instituted in the year 1984, and the registered sale deed in favour of defendant is of 1974, the adverse possession will be inferred only when the possession should be actual, visible, exclusive, hostile and peacefully continued physical possession for statutory period of 12 years. The concept of adverse possession has been discussed in the case of ***Ram Nagina Rai and Anr.*** versus ***Deo Kumar Rai (deceased) ( by Lrs) & Anr.*** reported in ***2019 (1)PLJR 371 (SC)*** and in another case reported in ***(2019 )15 SCC 756 (Mallikarjunaiah v. Manjaiah & Ors.)***. It is submitted that learned lower appellate court misdirected itself that since the suit was filed within 12 years and therefore, under Article 65 of the Act of 1963, the plaintiff is entitled to recovery of the possession because the defendants are in illegal possession as there is no appeal/ cross objection filed by them against the adverse finding that registered sale dated 30-12-1974 is held to be illegal by the trial court, Thus, the lower appellate court has misinterpreted and misapplied the law



of adverse possession under the provisions of Limitation Act. The lower appellate court allowed the appeal by wrongly applying the principal of adverse possession only on the basis of argument of the lawyers of the plaintiff without there being any pleadings and evidence available on the record. It is submitted that neither the plaintiff nor the defendants have pleaded that the defendants have acquired adverse possession. A question of adverse possession is a pure question of fact. There must be a specific pleading with necessary and specific particulars as well as evidence in support thereof. There is absolutely no claim by the defendants and no evidence adduced on acquiring title by adverse possession. The plaintiff- respondent never averred in her plaint or deposed that she has been wrongfully dispossessed by the defendant Nos. 2 and 3. With regard to adverse finding in respect of the sale deed, learned counsel for the appellants submits that the provision of Order XLI Rule 33 of the Civil Procedure Code ( for brevity ‘ the Code’) that the appellate court has power to pass a decree or make any order which “ought to have been passed”. The appellate court has further power that notwithstanding, the appeal is as to part only of the decree such power may be exercised in favour of or any of the respondents or party although respondent or party may not have



filed any appeal or objection. The finding regarding illegality of the registered sale deed dated 30-12-1974 was not challenged by the defendant- appellant in the lower appellate court by filing the cross- objection. It is settled law that the appellate court is vested with power to make any such order or pass any such decree which “ought to have been passed”. The said issue has been decided in catena of judgments of the Hon’ble Supreme Court, such as:

- (i) *AIR 1969 SC 1144 (Giani Ram & Ors. v. Ramji Lal and others)*
- (ii) *AIR 1976 SC 634 (Koksingh v. Smt. Deokabai)*
- (iii) *AIR 1976 SC 2229 (Damadilal & Ors. Parashram & Ors.)*
- (iv) *AIR 1973 Pat 126 (Ganganath Jha and others. vs. Shashi Nath Jha & Ors.)*
- (v) *AIR 1998 SC 3118 (K. Muthuswami Gounder vs. N. Palaniappa Gounder*
- (vi) *AIR 1999 SC 2626 (State of Punjab & Ors. vs. Bakshish Singh )*
- (vii) *(2010)10 SCC 458 (Pralhad & Ors. State of Maharashtra & Anr)*
- (viii) *(2009) 12 SCC 101 (Vishwanath Bapurao Sabale v. Shalinibai Nagappa Sabale & Ors.)*
- (ix) *(1994) 2 SCC 41 (Chaya & Ors. vs. Bapusaheb & Ors.*

13. The learned counsel for the appellant vehemently



submitted that the learned lower appellate Court has failed to exercise its jurisdiction under Order XLI Rule 33 of the Code vested in it by law, which resulted in perverse findings against Defendant Nos. 2 and 3. Learned Counsel for the appellants further submitted that filing of cross-objection under Order XLI Rule 22 of the Code is not mandatory in law against an adverse finding by the person aggrieved, rather it is a directory. Even without the cross -objection, the lower appellate Court could have decided the legality or illegality in given adverse finding on the basis of the registered sale deed under Order 41 Rule 33 of the Code. The reliance has been placed in the case of ***State of Punjab and Ors. vs. Bakshish Singh*** reported in **AIR 1999 SC 2626**. The Hon'ble Apex Court has held that the provisions of Order XLI Rule 33 gives very wide power to the appellate court to do complete justice between the parties and enables it to pass such decree or order as ought to have been passed or as the nature of the case may require notwithstanding that the party in whose favour the power is sought to be exercised has not filed appeal or cross-objections. It is further held that the powers of the appellate court are also indicated in Section 107 of the Code which provides that the appellate Court shall have the same power as are conferred on the original Court. If the Trial Court



could dispose of a case finally, the appellate Court could also, by virtue of Clause (a) of sub-section (1) of Section 107, determine a case finally. In ***R.S Lala Praduman Kumar v. Virendra Goyal*** reported in **AIR 1969 SC 1349**, it has been held that the appellate Court could even relieve against forfeiture in a case under the Transfer of Property Act. This too was based on the principle that the power which was available to the original Court, could be exercised by the appellate Court also. It is submitted that the suit is also barred under Section 34 of the Specific Relief Act because there is no relief of declaration of title of the plaintiff, namely, Pan Kuwer in the plaint. Moreover, the amendment with respect to relief of possession only was added after about 14 years and by that time, such relief was barred to the plaintiff and a valuable legal right had already accrued to the defendant no. 2.

14. On the other hand, Mr. Mahesh Narayan Parbat, learned senior counsel submitted that the findings of the learned Trial Court which were against the defendants were not challenged by them before the learned first appellate court by filing appeal or cross-objection and the said finding became final. It is submitted that original plaintiff namely, Pan Kuwer being the widow of Deoraj Rai was one of class-I heir and was



entitled for share equal to a son (defendant no. 1) with her absolute right in his properties and thus she had right to manage and safeguard the same and was competent to file suit in accordance with law. It is further submitted that learned trial court had found the sale deed, in question, dated 30.12.1974 was not valid, genuine and without consideration and was not executed for legal necessity. Learned senior counsel has also submitted that if a deed is declared as illegal, then possession of the vendee of deed becomes adverse. In this regard, reliance has been placed in the case reported in **AIR 1973 ALLAHABAD 201 (Bharit & Ors. v. The Hon'ble Board of Revenue , U.P. at Allahabad & Ors)**, wherein, it has been held that if a deed became illegal, then the possession of vendee become adverse from the said deed and therefore the learned appellate court below has rightly granted relief of recovery of possession. On this ground, Article 65 of the Limitation Act is applicable. So far provision of Order 41 Rule 33 of the Code of Civil Procedure is concerned, the scope of provision of Order 41 Rule 33 of the Code of Civil Procedure has been considered by the Hon'ble Apex Court in catena of decisions referred as **AIR 2003 SC 1989** as well as **2013(2) PLJR 134 (Bhagwatia Devi Vs. Arjun Prasad Thathera with Jawahar Lal Gupta Vs. Arjun Prasad**



**Thathera).** This Court, in paragraph 17 and 18, has held that:-

*(17.) The principles underlying the provision of Order 41 Rule 22 is no longer res integra. In the case of Banarsi Vs. Ram Phal, 2003(9)SCC 606, their lordships have considered this provision and laid down that in a case where the challenge to a finding by the court below, if succeeds, would result in the modification/variation of the decree, the respondent cannot be permitted to do this in absence of a cross-objection by him. It would be condign here to notice their lordships' observation: "...A respondent may defend himself without filing any cross-objection to the extent to which decree is in his favour; however, if he proposes to attack any part of the decree he must take cross-objection..."*

*(18.) In the present case, if the plaintiff-respondents are permitted to assail the finding regarding the adjustment of mortgage money in the consideration amount and thereby establish their liability to pay only Rs.1,17,500/-, it would certainly involve modification/variation in the impugned decree whereby the plaintiffs have been held liable to pay Rs.1,48,500/-. Their lordships have further also laid down that the appellate court even in exercise of its power under Order 41 Rule 33 C.P.C. also cannot allow such a challenge by the respondent."*



15. Considering the rival submissions, material on records as well as on perusal of impugned judgment of trial court, this Court would find that the learned trial court has extensively dealt with the oral and documentary evidence adduced by the parties for deciding the issue on which the parties went to trial. This Court would also find that regarding the knowledge about the sale deed dated 30.12.1974, the plaintiff has deposed in paragraph 9 of her cross-examination that she came to know about the sale deed executed by Jugal Rai after one year of the execution. Meaning thereby, the knowledge of registered sale deed is of December, 1975 and the present Suit was instituted on 05.03.1984 without claiming any title over the suit land. Moreover, nowhere in her deposition or plaintiff's evidence shows that the plaintiff had been dispossessed by the defendant nos. 2 and 3; neither filed any application during the pendency of this suit nor even at the time of amendment of the plaint on 23.02.1988, by adding relief 1(*ka*) in the plaint only for confirmation of possession and alternatively if she found dispossessed then recovery of possession. However, neither any application on date of dispossession either mentioned in trial court or before the appellate court.

16. Articles 58 and 59 of the Schedule to the Act of 1963



prescribe the period of limitation for filing a suit where a declaration is sought, or cancellation of an instrument, or rescission of a contract, which reads 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.                                                                                                                 |
| 59. To cancel or set aside an instrument or decree or for the rescission of a contract | Three years          | When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him.” |

17. The period of limitation prescribed in 58 and 59 of Act of 1963 is three years, which commences from the date when the right to sue first accrues. In the case of *Khatri Hotels Private Limited and Another vs. Union of India and Another* reported in (2011)9 SCC 126, the Hon’ble Apex Court held that the use of word ‘first’ between the words “sue” and “accrued” 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. That is, if there are successive violations of the right, it would not give rise to a fresh cause of action, and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the date when the right to sue first accrued. Thus, the right to sue accrues only when the cause of action arises. The suit must be instituted when the right



asserted in the suit is infringed. The plaintiff had admitted in her cross-examination that she had knowledge about the sale deed one year after execution of the sale deed, i.e. in December, 1975 and the present suit was filed in the year 1984. In the case of ***Raghwendra Sharan Singh vs. Ram Prasanna Singh(dead) by Legal Representatives*** reported in (2020)16 SCC 601, the Hon'ble Supreme Court has held that the suit would be barred by limitation under Article 59 of the Act of 1963 if it was filed beyond three years of the execution of the registered deed. The plaintiffs have failed to discharge the onus of proof that the suit was filed within the period of limitation, and also failed to prove her dispossession. Therefore, Article 65 of the Act of 1963 is not applicable in the present suit.

18. It is a settled position of law that an appeal is a continuation of the proceedings of the original Court. The appellate jurisdiction involves a re-hearing on law as well as on facts and, therefore, all questions of fact and law decided by the trial Court are open for re-consideration. Therefore, the first appellate Court is required to address itself to all the issues and decide the case by giving reasons. The Court of first appeal must record its findings only after dealing with all issues of law as well as fact and with the evidence, oral as well as documentary,



led by the parties. The judgment of the first appellate Court must display conscious application of mind and findings supported by reasons on all issues and contentions. These aspects have been considered in the case of ***Santosh Hazari Vs. Purushottam Tiwari (Deceased) by Lrs*** reported in ***(2001) 3 SCC 179*** as well as ***B. M. Narayan Gowda Vs. Shanthamma (Dead) by Lrs and another*** reported in ***(2011) 15 SCC 476***.

19. From the above discussion, it appears that the appellate Court has failed to exercise its power and jurisdiction. The Trial Court has rightly held that the plaintiff is not entitled to recovery of possession. So far findings with regard to the case of adverse possession is concerned, the appellate Court, by making out a third case neither any claim of adverse possession by the plaintiff nor by the defendant, assumed that when the sale deed is void and illegal, the vendee's possession automatically becomes adverse to the plaintiff. This finding is completely erroneous and on wrong interpretation of law. Further the suit is also barred by law of Limitation and the findings given by the learned Trial Court attracting Article 59 of the Limitation Act, in the instant matter, whereby the period of limitation is three years is correct and the finding of the Trial Court is affirmed whereas the finding on this score by the learned appellate Court invoking



Article 65 of the Limitation Act is erroneous and perverse and, therefore, judgment and decree of the appellate Court is set aside.

20. In view of the above discussion as well as in the facts and circumstances of the case, the substantial questions of law formulated are, therefore, answered in favour of the appellants.

21. Thus, the Second Appeal has got merit and accordingly, it is allowed.

**(Khatim Reza, J)**

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