

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**RSA No.5483 of 2019 (O&M)
Date of Decision:06.01.2023**

Ajaib Singh and others

.....Appellants

Vs.

Harbans Kaur and another

.....Respondents

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Puneet Kaur Sekhon, Advocate
for the appellants.

Mr. R.K. Singla, Advocate with
Ms. Swati Verma, Advocate for the
respondents.

DEEPAK GUPTA, J.

Defendants are in this second appeal against the concurrent findings of the Courts below. In order to avoid confusion, the parties shall be referred as per their status before the learned trial Court.

2. Plaintiffs – Harbans Kaur & Simarjit Kaur @ Harsimber Jit Kaur (now respondents) filed the suit bearing registration No.CS/ 080/2009 titled 'Harbans Kaur & another Vs. Ajaib Singh & Others' seeking decree for declaration, possession and consequential relief of permanent injunction against defendants Ajaib Singh & Others (now appellants), with regard to suit property, before Ld. Addl. Civil Judge (Sr. Divn.) Baba Bakala Sahib, Amritsar.

3. Some admitted facts may be noticed. Charan Singh son of Ujagar Singh, native of Village Bhoe, Tehsil Baba Bakala, Amritsar was owner in possession of the suit land measuring 15 kanals. He shifted to Indonesia long back and died there on 09.11.1980 as per death certificate

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Ex.P7. He had appointed his mother Smt. Tej Kaur as his General Attorney by executing Power of Attorney dated 10.10.1975 (Ex.D1). On the strength of this Power of Attorney, Smt. Tej Kaur acting as General Power of Attorney Holder of Charan Singh executed three sale deeds dated 12.06.1981 (Ex.D3, Ex.D5 and Ex.D11) in respect of 5 kanal each i.e. total 15 kanals of the suit land in favour of three brothers, i.e. defendants No.1, 2 and 3. Prior thereto, Charan Singh had mortgaged the suit land in favour of defendant No.3 vide the mortgage deed dated 05.08.1975 (Ex.D2) and ever since the date of mortgage, defendant No.3 was in possession of the suit land.

4. Plaintiffs are the widow and daughter i.e. natural legal heirs of deceased Charan Singh son of Ujagar Singh. They visited India in 2008 and came to know about the sale deeds in favour of the defendants. These three sale deeds have been challenged by the plaintiffs to be null, illegal and void being result of fraud and also beyond the competency of power of attorney holder and, so, liable to be set aside, as Charan Singh had already expired on 09.11.1980. They sought decree for declaration to this effect and also prayed for declaration that they are owners of the suit land. Plaintiffs further prayed for possession of the suit land with consequential relief of permanent injunction to restrain the defendants from alienating any portion of the land.

5. The stand of the defendants is that sale deeds executed on 12.06.1981 have been challenged in the year 2009 i.e. after 28 years and, so, the suit is hopelessly time barred. They denied that the plaintiffs gained knowledge regarding the impugned sale deed in 2008 on their visit to India. They also raised objection of non-joinder of the necessary parties, inasmuch Smt. Tej Kaur was not impleaded as a party to the suit. They further pleaded that they are bonafide

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purchasers of the suit land for consideration without notice, as sale deeds in question were executed through General Power of Attorney of Charan Singh. In the alternative, the possession of the defendants on the suit land is stated to be open, hostile, uninterrupted and continuous for the last more than 28 years and so adverse possession has already matured into ownership. They also pleaded about the prior mortgage deed dated 05.08.1975.

With this stand and controverting other submissions of the plaint, defendants prayed for dismissal of the suit.

6. In rejoinder, plaintiffs reiterated their case.

7. The following issues were framed for adjudication by learned trial Court.

- 1) Whether the plaintiffs are entitled to the relief of declaration as prayed for?OPP
- 2) Whether the plaintiffs are entitled to the discretionary relief of permanent injunction as prayed for?OPP
- 3) Whether the suit filed by the plaintiffs is maintainable?OPP
- 4) Whether the suit is within limitation?OPP
- 5) Whether the defendants are bonafide purchasers for consideration, without notice?OPD
- 6) Whether the plaintiffs have no locus standi to file the present suit?OPD
- 7) Whether the plaintiff is estopped by his own act and conduct from filing the present suit?OPD
- 8) Whether the suit is bad for mis-joinder and non-joinder of necessary parties?OPD
- 9) Whether the suit is not properly valued for the purposes of court fee and jurisdiction?OPD\
- 10) Whether the plaintiffs have not come to the Court with clean hands?OPD

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11) Relief.

8. The evidence produced by the parties in support of their respective stand was taken on record. Here itself, it may be noted that none of the plaintiffs entered the witness box. Only their attorney Jagtar Singh appeared on their behalf as PW1 to support the case of plaintiffs. PW2 is the cousin of Charan Singh, who also supported their case. On the other hand, defendants No.1 and 2 and one of the legal heirs of defendant No.3 (who had expired during pendency of the suit) appeared as DW1, DW2 and DW3 respectively, to support their case. Witnesses of the sale deeds, mortgage deed, Power of Attorney etc., have also been examined, execution of which is otherwise not in dispute.

9. Issues No.1 to 4 were taken up together for discussion by the trial court and all these issues were decided in favour of the plaintiffs to the effect that they are entitled to the declaration prayed for as well as the relief of injunction; that suit is maintainable and that it is within limitation. Finding on Issue No.5 went against the defendants. Issues No.6 to 10 were disposed of as not pressed for. Consequent to all these findings, the suit was decreed vide judgment and decree dated 10.10.2016 by learned Additional Civil Judge (Senior Division), Baba Bakala Sahib, Amritsar.

10. First Appeal bearing CNR N: PBAS01-013469-2016, filed by the defendants of the case was dismissed by learned Additional District Judge, Amritsar vide judgment and decree dated 30.08.2019.

11. These concurrent findings of the courts below have brought the defendants before this Court by filing this second appeal.

12. (a) It is contended by learned counsel for the appellants that both the Courts fell in error in holding the suit to be within limitation. Sale deeds executed

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on 12.06.1981 have been challenged by the respondents- plaintiffs in the year 2009 and so, suit is hopelessly barred by time. It is urged that even if it be assumed that sale deeds were null and void, as owner Charan Singh had already expired prior to the execution of the sale deed, possession of defendants had become adverse because registration of the sale deeds is notice to the general public. Plea of adverse possession was specifically taken by the defendants, which matured into ownership after expiry of 12 years from the date of adverse possession and, therefore, suit for declaration on the basis of alleged inheritance, cannot be stated to be within limitation.

(b) It is urged further that Charan Singh had shifted to Indonesia and started residing there with his family, after executing General Power of Attorney in favour of his mother. Defendants were not aware about the death of Charan Singh and so, the impugned sale deeds in their favour executed through Power of Attorney of Charan Singh cannot be stated to be illegal, as defendants are bona-fide purchasers for valuable consideration.

(c) Still further, it is urged that after the death of Charan Singh, his estate was inherited not only by the plaintiffs being the widow and daughter of the deceased but also by Smt. Tej Kaur as Mother of the deceased. In the circumstances, the impugned sale deeds are deemed to be executed by Smt. Tej Kaur as one of the co-sharers and if it is assumed that defendants are in possession to the extent of more than their share, they are protected by Section 44 of the Transfer of the Property Act and that remedy for the plaintiffs is to file a suit for partition.

(d) It is pointed out further that none of the plaintiffs entered the witness box. The statement of their attorney Shri Jagtar Singh to the effect that plaintiffs

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were not aware about the impugned sale deeds till the plaintiffs came to India in 2008 is not believable because said fact could be only in the personal knowledge of the plaintiffs. The attorney can be believed to the extent that plaintiffs never visited India till 2008 but by this fact, inference can not be drawn to the effect that plaintiffs could not know about the sale deeds till their visit to India.

(e) Still further, it is urged that suit is collusive between plaintiffs and Smt. Tej Kaur, inasmuch as neither Tej Kaur has been impleaded as a party to the suit nor any criminal prosecution was launched against her, in case she executed the impugned sale deeds despite the death of Charan Singh.

(f) With these submissions, prayer is made to set aside the impugned judgments and decrees passed by the Courts below and to dismiss the suit of the plaintiffs- respondents, by accepting this appeal.

13. On the other hand, learned counsel for the respondents - plaintiffs has defended the impugned judgments & decrees and contended that there is no reason to interfere in the concurrent findings returned by the Courts below. Contentions raised by him shall be referred at appropriate places in the discussion below

14. I have considered the submissions of both the sides and have perused the record carefully.

15. Admitted facts have already been noticed to the effect that prior to going to Indonesia, Charan Singh had appointed his mother Smt. Tej Kaur as his General Attorney vide GPA dated 10.10.1975. Evidence on record establishes that Charan Singh expired in Indonesia on 09.11.1980. It is also the matter of documentary evidence on record that three impugned sale deeds regarding suit land in favour of defendants have been executed on 12.06.1981 i.e. after the death

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of Charan Singh.

16. It is the settled proposition of law that Power of Attorney lapses on the death of the executor. Reference may be made to ***Rajinder Kumar Vs. State of Punjab, 2002(4) RCR (Civil) 666***. On the death of the executant of the Power of Attorney, the attorney no longer has any power to sell the property on the basis of Power of Attorney. In these facts and circumstances, there can be no hesitation to conclude that three impugned sale deeds, all dated 12.06.1981 (Ex.D3, Ex.D5 and Ex.D11) are null and void and these sale deeds did not confer any title in favour of the defendants on behalf of the vendor Charan Singh.

17. However, it is not in dispute that defendant No.3 was already in possession of the suit land by dint of mortgage deed dated 05.8.1975 (Ex.D2), which had been executed by Charan Singh himself. Therefore, possession of the one of the defendants on the suit land from the date of this mortgage deed till the death of Charan Singh; or at least till the date of execution of the sale deeds dated 12.06.1981, was permissible. As soon as Charan Singh expired on 09.11.1980 and the sale deeds executed subsequently on 12.06.1981 through his attorney became null and void, the possession of defendants became adverse to that of the true owners, i.e. natural legal heirs, because sale deed is a notice to all.

18. In ***Smt. Bhagwan Kaur V. Land Acquisition Collector, Ludhiana (P&H), 2012 (4) PLR 563***, it was held by this High Court that the registration of an instrument itself constitutes notice and it will be futile for a person to contend that the fact of registered sale deed came to be surface only when the property was acquired and when the complaint was lodged before the collector, when the award was passed on 08.11.1977.

19. In ***Utha Moidu Haji Vs. Kuningarath Kunhabdulla (SC) 2006(14)***

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Scale 156, it has been held by Hon'ble Supreme Court that when a person enters into possession of land under void or voidable transaction, his possession becomes adverse from the date he comes into possession and that starting point of limitation of the adverse possession is, when he enters into possession under such a void or voidable transaction.

In the above case before Hon'ble Supreme Court, defendants No.2 to 8 sold land in dispute vide registered sale deed dated 30.08.1963 not only on their behalf but also on behalf of the minor child (plaintiff), in favour of X. Plaintiff attained majority on 30.07.1974 and filed the suit for setting aside the sale deed on 18.03.1981. Hon'ble Supreme Court held that plaintiff would be deemed to have knowledge about the execution of the sale deed on his attaining majority, as soon as he pleaded and proved that his case comes within the purview of the exception contained in the provisions of Limitation Act. The period of limitation would be either three years from the date of attaining majority by the plaintiff or 12 years from the date of execution of sale deed. As plaintiff had filed the suit after sleeping for six years over his right to sue, the suit was held to be barred by Article 60 (a) of the Limitation Act.

20. In present case, defendants started claiming ownership of the suit land on the basis of acquiring title by virtue of sale deeds dated 12.06.1981 Ex.D3, Ex.D5 and Ex.D11. In view of these sale deeds in their favour, the permissive possession on account of mortgage dated 5.8.1975 in favour of defendant N: 3 came to an end. However, as these sale deeds are null and void, so obviously, the possession of all the defendants including that of defendant N: 3 became adverse, in view of legal position explained in ***Utha Moidu Haji's case (supra)***. The said possession was open, continuous, uninterrupted and became

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hostile to the true owners (i.e. legal heirs of Charan Singh), as defendants had started claiming to be owners on the basis of null, illegal and void sale transactions in their favour.

21. The contention of learned counsel for the respondents - plaintiffs is that as defendants were claiming possession on the basis of sale deeds, so their possession was permissive and not adverse. It is urged that once the defendants pleaded possession on the basis of title, they cannot be allowed to take the plea of adverse possession. Reliance is placed upon ***Ram Lal and others Vs. Chetu alias Chet Ram and others, 1957 PLR 497***, wherein Division Bench of this Punjab High Court held as under:-

“Adverse possession, as the words imply, must be actual possession of another's land with intention to hold it and claim it as his own. It must commence with the wrongful dispossession of the rightful owner at some particular time; it must commence in wrong and must be maintained against right. It must be actual, open, notorious, hostile, under claim of right, continuous and exclusive and maintained for the statutory period. Indeed it should be so open and exclusive as to leave no doubt as to the intention of the occupant, so notorious that the owner may be presumed to have knowledge of the adverse claim and so continuous as to furnish a cause of action every day during the required period..

If possession is permissive and not antagonistic to the owner, it cannot ripen into title by mere possession. Thus the possession of a tenant is that of his landlord and will be so presumed until the contrary is proved by clear and convincing evidence, for every presumption is in favour of possession in subordination to the true owner. Although possession of a tenant, however full and complete, does not of itself operate as an ouster

of the owner, the mere fact that a person enters as a tenant does not preclude him from acquiring title against his landlord by adverse possession. It can operate as an ouster if he abandons the idea of holding as a tenant and sets up and asserts an exclusive right in himself. He must either give notice of his claim or his possession should be accompanied by some overt act asserting an ownership of such an open, notorious and hostile character as not to be easily misunderstood. The fact that a tenant continues to retain possession of the property after the expiry of the lease or the fact that he fails or refuses to pay the rent is not sufficient to show that he holds adversely to the landlord unless he actually sets up an exclusive right in himself by some clear, positive and unequivocal act. Limitation begins to run when the possession of the tenant becomes adverse to that of the owner, i.e., when the acts of the tenant are of such a character as to show that he claims exclusive ownership and denies the rights of the owner. Mere declarations are not enough

22. Learned counsel for the respondents - plaintiffs also referred to :

(a) ***S. Ganesan Vs. Bharathirajan, 2009(8) R.C.R. (Civil) 598***, wherein Madurai Bench of Madras High Court held that plea based on title and adverse possession cannot go together and that doctrine of adverse possession can be claimed only when title of the owner is accepted.

(b) ***Communist Party, Ropar and others Vs. Sant Saran Bhalla (Dead) through his LRs and others, 2007(2) PLR 475***, wherein suit for possession was filed by the owner. Defendant took the plea of adverse possession. It was held that plea of adverse possession by necessary implication means the admission of the title of the plaintiffs and since title of the plaintiffs was not disputed so it was for the defendants to prove the adverse possession.

(c) *Karnataka Board of Wakf Vs. Government of India, 2004 (2) RCR (Civil)*

702, wherein it was held by Hon'ble Supreme Court as under:-

“In the eye of law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of true owner. It is a well- settled principle that a party claiming adverse possession must prove that his possession is 'nec vi, nec clam, nec precario', that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. (See : [S M Karim v. Bibi Sakinal AIR 1964 SC 1254](#), [Parsinni v. Sukhi \(1993\) 4 SCC 375](#) and [D N Venkatarayappa v. State of Karnataka \(1997\) 7 SCC 567](#)). Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse

possession. ([Dr. Mahesh Chand Sharma v. Raj Kumari Sharma \(1996\) 8 SCC 128](#)). ”

(d) After referring to ***Karnataka Board of Wakf's case (supra)***, a co-ordinate Bench of this High Court held in ***Sukhdev Singh and others Vs. Jagga Singh and others, 2017(3) R.C.R. (Civil) 539***, as under:-

“As per aforesaid ratio of law laid down by the Hon'ble Apex Court in order to prove the plea of adverse possession, the following ingredients are required to be established:-

- 1. On what date he came into possession;*
- 2. What was the nature of his possession;*
- 3. Whether the factum of possession was known to the other party;*
- 4. How long possession is continued*
- 5. And his possession was open and undisturbed.”*

23. There can be no dispute to the legal proposition that taking the plea of adverse possession by a person means admitting the title of the true owner. However, equally true is the legal position that even if possession of such a person in the beginning is permissive either as mortgagee or as tenant or in any other such capacity, the said fact does not preclude that person from acquiring title against the owner by adverse possession, if he sets up and asserts an exclusive right in himself by abandoning the idea of holding as a tenant/mortgagee etc. in denial of the title of true owner. However, such a person claiming adverse possession must prove that his possession is peaceful, open and continuous; adequate in continuity, in publicity and in extent to show that his possession is adverse and hostile to the true owner and has continued over the statutory period. Plea of adverse possession being a blended question of fact and law, therefore,

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such a person claiming adverse possession has to show as to: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and that (e) his possession was open and undisturbed. Such a person pleading adverse possession having no equities in his favour, as he is trying to defeat the rights of true owner, so it is for him to clearly plead and prove all facts necessary to establish his adverse possession. It may be clarified that though the possession must be open and hostile enough to be capable of being known by the parties interested in the property, but it is not necessary that there should be evidence of the adverse possessor actually informing the real owner of the former's hostile action as observed in *Hemaji Waghaji Jat v. Bhikhabhai Khengarbhai Harijan & Ors., 2009(16) SCC 517.*

24. Adverting to the facts of present case, the contention of Ld. Counsel for the respondents - plaintiffs to the effect that appellants- defendants cannot be allowed to take the plea of adverse possession as they are claiming title of the suit property on the basis of sale transactions in their favour, has no merit. Rather, in the facts and circumstances of present case, this plea goes against the plaintiffs because it has been found that though the defendants claim title on the basis of sale deeds dated 12.06.1981 but as these sale deeds have been found to be null and void, so their possession became hostile, in view of legal position explained by Hon'ble Supreme Court in *Utha Moidu Haji's case (supra)*

25. Proceeding further, as discussed above, a person in permissible possession over the suit land cannot become owner only on the basis of long possession. However, in case the said person starts proclaiming to be owner to the knowledge of the true owner, even if his possession in the beginning was

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permissive, it will become adverse, the moment he starts proclaiming to be in hostile possession.

26. In the present case also, the moment the sale deeds dated 12.06.1981 (Ex.D3, Ex.D5 & Ex.D11) in favour of defendants executed by the attorney of the owner, became null and void, on account of the fact that owner Charan Singh had already expired, the possession of the defendants became hostile, as they no longer could be stated to be in permissive possession on the basis of the prior mortgage.

27. From 12.06.1981 onwards, as the sale deeds were null and void but defendants were still continuing to be in possession on the basis of these null & void sale deeds, they perfected their title on the expiry of statutory period of limitation, as their possession was open, continuous, hostile and adverse to the title to the true owners/natural heirs of Charan Singh.

28. There is another angle to the case. On the death of Charan Singh on 09.11.1980, his estate was inherited by three legal heirs, i.e. mother Smt. Tej Kaur and the two plaintiffs, i.e. widow and daughter. So, Smt. Tej Kaur became co-sharer in the suit land to the extent of 1/3rd share. If the sale deeds dated 12.6.1981 Ex.D3, Ex.D5 and Ex.D11 are assumed to be executed by one of the co-sharers in favour of the defendants, then their possession is legal, as they acquired title at least to the extent of one third share on the basis of the sale deeds executed by one of the co-sharers and so, it can be stated that at the most, defendants are in possession of more than their 1/3rd share. In this eventuality, the only option for the plaintiffs was to seek possession of their share in the suit property by filing the suit for partition.

29. Not only above, Section 43 of the Transfer of Property Act, 1882 also

comes to the aid of defendants, which reads as under:

***“43. Transfer by unauthorised person who subsequently acquires interest in property transferred.*—Where a person fraudulently or erroneously represents that he is authorised to transfer certain immovable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists.**

Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.

Illustration

A, a Hindu who has separated from his father B, sells to C three fields, X, Y and Z, representing that A is authorised to transfer the same. Of these fields Z does not belong to A, it having been retained by B on the partition; but on B's dying A as heir obtains Z. C, not having rescinded the contract of sale, may require A to deliver Z to him.”

30. In this case, Smt. Tej Kaur fraudulently or let it be assumed erroneously representing on the basis of power of attorney in her favour, to be authorised to transfer suit property, transferred the same for consideration in favour of the defendants, such transfer shall operate on the interests of the transferor Smt. Tej Kaur, which she acquired in such property on the death of Charan Singh, as by that time the contract of transfer subsisted.

31. In the alternative, if the sale deeds dated 12.06.1981 cannot be considered to have been executed by one of the co-sharers Smt. Tej Kaur because said Smt. Tej Kaur had not executed the same in her individual capacity as co-sharer and rather, had executed the same as attorney of Charan Singh, who had already expired, in that eventuality, the sale deeds are null and void. In that case,

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at least co-sharer Smt. Tej Kaur was fully aware of the fact that sale deeds being null and void, so possession of the defendants over the suit land had become adverse, as they were claiming possession on the basis of null and void sale deeds. Knowledge of one of the co-sharer is assumed to be knowledge of all. In these facts, plaintiffs cannot plead that they were not aware of the impugned sale deeds and became aware only in 2008 when they visited India.

32. Here also, the case as pleaded by the plaintiffs to the effect that they came to know about the sale deeds only in 2008, when they visited India, is not proved on record. Although the testimony of PW1 Jagtar Singh, attorney of plaintiffs proves that plaintiffs never visited India after the death of Charan Singh in 1980 till 2008, but said Power of Attorney cannot be in the knowledge of the fact that plaintiffs were not aware about the impugned sale deeds. In ***Mohinder Kaur Vs. Sant Paul Singh, 2019(4) R.C.R. (Civil) 784***, it was held that power of attorney holder cannot depose for the principal in respect of matters of which principal alone can have personal knowledge and in respect of which principal is liable to be cross-examined. Hon'ble Supreme Court held as under:-

6. In Janki Vashdeo (supra), it was held that a power of attorney holder, who has acted in pursuance of the said power, may depose on behalf of the principal in respect of such acts but cannot depose for the principal for the acts done by the principal and not by the power of attorney holder. Likewise, the power of attorney holder cannot depose for the principal in respect of matters of which the principal alone can have personal knowledge and in respect of which the principal is entitled to be cross-examined. In our opinion, the failure of the respondent to appear in the witness box can well

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be considered to raise an adverse presumption against him as further observed therein as follows :

“15. Apart from what has been stated, this Court in the case of [Vidhyadhar v. Manikrao](#) observed at SCC pp. 583- 84, para 17 that:

“17. Where a party to the suit does not appear in the witness box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct....”

33. None of the plaintiffs having entered the witness box to prove that they were not aware about the impugned sale deeds prior to their visit to India in 2008, so adverse inference can be drawn against them that had they entered the witness box, they could not face the cross-examination. Presumption can be raised of their knowledge about the impugned sale deeds, as it cannot be assumed that plaintiffs could know about the sale deeds only on their visit to India. After all, the mother-in-law of plaintiff No.1 and grandmother of plaintiff No.2 Smt. Tej Kaur was residing in India, who was fully aware of the fact that sale deeds executed by her were null and void, as executant of the Power of Attorney Charan Singh had already expired. Smt. Tej Kaur has not been even impleaded as a party to the suit nor she has been examined as a witness to depose about the knowledge of plaintiffs about the impugned sale deeds. Besides, Tej Kaur having executed the impugned sale deeds as attorney despite having knowledge of the death of her son Charan Singh, it was a clear case of fraud with the defendants as well as with

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the plaintiffs. There is neither any pleading nor evidence that plaintiffs ever took any action against Smt. Tej Kaur.

34. Learned Courts below have reached to a wrong conclusion that suit filed by the plaintiffs is within limitation. No doubt that there is no limitation prescribed to file a suit for possession based on inheritance of title, as argued by Ld. Counsel for the respondents – plaintiffs by placing reliance on ***Mohinder Singh (died) and Rep. by his LRs and another Vs. Kashmira Singh, 1985 PLJ 82***, but the said rule is not absolute.

35. In case, a suit is filed on the basis of inheritance, defendant can set up a plea of adverse possession. In such a case, suit is to be filed within 12 years and the time begins to run, when the possession of the defendant becomes adverse to the plaintiff, as per Article 65 of the Schedule to the Limitation Act, 1963. Reliance in this regard can be placed upon ***Mohinder Singh (died) and Rep. by his LRs and another Vs. Kashmira Singh (supra) itself***, wherein it was held by a Division Bench of this High Court as under:-

“After hearing the learned counsel for the parties, I find force in the contention of the learned counsel for the respondent. It is well established principle of law that inheritance does not remain in abeyance and the heirs after the death of the last male holder succeed to the property of the deceased in accordance with law. Kashmira Singh, being the son of Niranjana Singh deceased, was entitled to 1/3rd share in the land in dispute. After the death of Niranjana Singh, he was not required to file any suit for possession on the basis of inheritance. He had become full owner of his share in the property on the death of the last male holder. For establishing his right as an heir, he was not required to file a suit. However, a situation may arise when the heir is not in possession of the

property inherited. In that event a suit for possession may have to be filed and on contest the same may fail on the defendant proving that he has perfected his title by adverse possession. It is such type of suit which is governed by the provisions of Article 65 of the Limitation Act.”

36. In ***Amar Chandra Vs. Kamla Devi and another, 2015 (51) RCR (Civil) 769***, it has been held by Allahabad High Court that on the issue of restoration of possession, limitation would be reckoned from the date, one is dispossessed or when the defendants' possession become adverse.

37. Similarly, in ***Qadir Bux v. Ramchand and others, AIR 1970 Allahabad 289***, this High Court has held that in order to attract Article 65, if a person has got possession even if under a void sale, his possession would be adverse to the real owner and by possessing for more than 12 years, he acquires title by adverse possession. Any action against him by real owner has to be filed within 12 years of such possession, otherwise suit for possession would be barred by limitation. For the purpose of a declaration, limitation commences from the date of cause of action. Similarly, for the purpose of restoration of possession, limitation would commence from the date one is dispossessed or the defendant's possession become adverse.

38. In the present case, defendants were already in possession of the suit land. Their possession became adverse on 12.06.1981, when null, illegal and void sale deeds were executed in their favour by Smt. Tej Kaur – the attorney of the owner, despite the fact that owner Charan Singh had already expired. Their possession remained peaceful, open, hostile, continuous and to the knowledge of the true owner i.e. plaintiffs & Smt. Tej Kaur, who had inherited the estate of Charan Singh. Said possession matured into ownership of defendants after expiry

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of statutory period of 12 years of limitation. Therefore, the suit filed in 2009 by the plaintiffs, is clearly barred by limitation.

39. On the basis of entire discussion as above, it is held that none of the findings returned by the Courts below can be sustained. Plaintiffs are not entitled to the declaration or possession of suit land or injunction as prayed for by them. The suit filed by plaintiffs is dismissed by setting aside impugned judgments and decrees passed by the Courts below. The present appeal of defendants is hereby accepted. However, in the peculiar facts and circumstances of the case, parties are left to bear their own costs.

January 6, 2023
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(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No