

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: April 10, 2023

+ CS(OS) 203/2022, I.As. 5656/2022, 5657/2022, 8087/2022,
8088/2022, 8092/2022, 10458/2022 & 12310/2022

SMT SATULA DEVI

..... Plaintiff

Through: Mr. Vikas Singh, Sr. Adv. with
Mr. Varun Singh, Ms. Deepika Kalia,
Mr. Himanshu Yadav, Mr. Ytharth
Kumar, Ms. Priyanka Khosla and
Mr. Kapish Seth, Advs.

versus

MR RAJEEV SHARMA & ORS.

..... Defendants

Through: Mr. Ravi Sharma and Mr. Anjani
Kumar Rai, Advs. for D-1
Mr. Sandeep Sethi, Sr. Adv. with
Mr. D. Abhinav Rao, Adv. for D-2
Mr. Rajiv Nayar, Sr. Adv. with
Mr. Mahesh Agarwal, Mr. Rishi
Agrawala, Ms. Niyati Kohli,
Mr. Pratham Vir Agarwal and
Ms. Manavi Agarwal, Advs. for D-
2A & D-2B

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

BRIEF FACTS

1. The plaintiff viz. Satula Devi has filed the present suit seeking,
inter alia a declaration to the effect that she be declared as the owner

of the suit properties as stated in the Schedule attached with this suit and various other reliefs. The plaintiff has specifically prayed for the following reliefs:

“It is, therefore, humbly prayed that in the interest of justice your honour may very kindly be pleased to: -

- a) Pass a Decree for Declaration in favour of the Plaintiff and against the Defendant declaring the Plaintiff as owner of the suit properties as stated in the Schedule Attached with the instant suit.*
- b) Pass a Decree declaring the Will dated 18.07.2011 as null and void as the Plaintiffs husband could not have bequeathed the scheduled properties as the Plaintiff was the rightful owner of the same, in light of the fact that the entire estate of Dr. Prasad as it stands today was created by using the corpus of the Stridhan of the Plaintiff.*
- c) Any other relief which this Hon’ble Court deems appropriate and suitable in the interest of justice and in the facts and circumstances of the case be also granted to the Plaintiff.”*

2. It is the case of the plaintiff that she was the lawfully wedded wife of late Dr. Mahendra Prasad, having married him in the year 1960. That late Dr. Mahendra Prasad was from a poor family and the plaintiff being from an extremely rich family, brought substantial amount of gold (approximately 4.5Kgs), in the form of *Stridhan*, at the time of her marriage.

3. Out of the said wedlock, the plaintiff and Dr. Mahendra Prasad had three children viz. Rajeev Sharma (herein, ‘defendant No.1’), Mr. Ranjit Sharma (herein, ‘defendant No.3’) and late Devinder Rai.

4. That on February 10, 1989, late Devinder Rai got married to one Meeta Mohini. From this wedlock, one child viz. Mahadevi

Bhagwati was born, who is the 'defendant No.2C' in the present suit. The aforesaid wedlock ended through a decree of divorce on August 29, 1995.

5. That after the said divorce, late Devinder Rai tied a knot with one Kanchan Rai (herein, 'defendant No.2') and out of this wedlock, two children viz. Achintya Rai (herein, defendant No.2A) and Aradhya Rai (herein, 'defendant No.2B') were born.

6. The controversy started in the year 1971, when the plaintiff out of love and affection, coupled with the fact that her husband did not have a fixed employment, handed over approximately 4.5 Kgs of gold (her '*Stridhan*') to him.

7. It is the case of the plaintiff that her husband used the money out of that '*Stridhan*' for trading in pharmaceutical commodities and from the earnings therefrom set up the flagship company viz. M/S Aristo Pharmaceuticals Pvt. Ltd.

8. It is also the case of the plaintiff that her husband had no other source of capital other than the gold/*Stridhan* provided by the plaintiff and it was for this reason that in the initial years of the formation of the company, her husband had maintained the shareholding of the plaintiff and her sons as approximately as 70% in the afore-said Company.

9. After sometime, the plaintiff's husband had brought another woman to their home viz. Uma Devi and it is stated that because of the plaintiff's unwavering devotion towards her husband, she did not raise any issues with respect to the presence of a foreign woman in their home.

10. It is further the case of the plaintiff that she was confident that till the time her husband's mental faculties were intact, she would not have to worry about his estate and her interest shall be secured. It is stated that her husband's mental faculties gradually eroded overtime and taking advantage of the same, the defendant No.2 and Uma Devi started taking control over the estate of the plaintiff's husband.

11. It is stated that in the year 1997, the medical reports of plaintiff's husband revealed that he had started having transient memory loss since 1990; moreover, mild changes in the frontal lobe portion of his brain were also seen.

12. It is stated that, in between the events to be followed, in the year 2011, late Devender Rai died and the defendant No.2 is alleged to be the key reason behind the sudden demise of late Devender Rai.

13. It is further the case of the plaintiff that in the year 2017, when the mental condition of plaintiff's husband started rapidly deteriorating, Ms. Uma Devi, in connivance with the defendant No.2 and other individuals, started hatching their evil plan of alienating the plaintiff's husband from all the members of his family, including the plaintiff.

14. That taking into consideration the deteriorating medical condition of her husband, the plaintiff, on February 01, 2020, preferred a Writ Petition (C) bearing No.1271 of 2020 before this Court, seeking her appointment as the sole legal guardian of her husband to deal with his mental disability and treatment, and also to manage his properties, investments and other financial affairs. It is further stated that the primary reason of the plaintiff to secure the legal guardianship of her

husband was that her husband used to be continuously surrounded by the defendant No.2, (who, it is alleged, wanted to take advantage of his diminishing faculties in order to manipulate his whole estate).

15. That in the aforesaid Writ Petition, it was the case of the plaintiff that the respondents therein used to delay the hearings by using sharp tactics. It is specifically stated that on September 07, 2021 when the Writ was called for hearing, the counsel of Ms. Uma Devi mentioned the matter at 10:30 a.m. and sought the adjournment. When the plaintiff came to know that the condition of her husband was critical and also that the adjournment was sought only to delay the hearing, without informing the Court about the deteriorating health of the plaintiff's husband and his admission to the hospital, the matter was again mentioned by the plaintiff's counsel on the very next day. The court upon noticing the above fact and seeing the urgency in the matter, appointed (Retd.) Justice Rajiv Sahai Endlaw as an interim guardian of the plaintiff's husband to administer his movable and immovable assets.

16. It is further stated that in the afore-said writ petition, despite perusing the 'Will' (in question) dated July 18, 2011, this Court did not consider it fit to appoint, the defendant No. 2 herein, who is the executor of the said Will or her sons, Achintya Rai (defendant No. 2A herein) and Aradhya Rai (defendant No. 2B herein), who are the beneficiaries of the Will, in the Guardianship Committee.

17. It is stated that the plaintiff's husband after developing pneumonia, was admitted to the Apollo hospital on November 20, 2021, without seeking any consultation from the empanelled doctors as

well as in defiance of the final order passed in W.P. (C) 1271/2020. It is further stated that on December 27, 2021, the plaintiff's husband, unfortunately passed away and later on that day itself, the plaintiff's sons were beaten up by the sons of defendant No. 2.

18. That on January 03, 2022, defendant No.2 filed a petition seeking grant of probate (bearing, Test Cas. No. 1 of 2022) of the said Will left by the plaintiff's husband, in which he purportedly made the defendant No. 2, the Executor and her children, the beneficiaries. It is stated that the said Will has a vague and uncertain clause, which stipulates that the TDRs, RBI bonds etc., be transferred in the favour of the nominee without even disclosing the name of the nominee/beneficiary.

19. It is also stated that on January 06, 2022, the plaintiff filed an application (bearing C.M. Appl. No. 697 of 2022), seeking direction in W.P. 1271/2020, for the appointment of (Retd.) Justice Rajiv Sahai Endlaw as the sole legal guardian, as well as, the direction was also sought against Umesh Sharma (younger brother of the plaintiff's husband) for the release of complete information regarding the financial assets of the plaintiff's husband/testator. That this Court granted the relief to the effect that the erstwhile Guardianship Committee was dissolved and appointed Retd. Justice Rajiv Sahai Endlaw, as the sole legal guardian of the movable as well as the immovable assets of the plaintiff's husband. It is further stated that this Court had specifically ordered the parties, not to make any withdrawals from the accounts of the plaintiff's husband without the permission of this Court.

20. It is also stated that the plaintiff, on January 25, 2022, had also filed an application bearing I.A. No. 577 of 2022, in Test Cas. No. 1 of 2022, under Section 247 of the Indian Succession Act, 1925 seeking appointment of the Ld. Sole Guardian i.e., (Retd) Justice Rajiv Sahai Endlaw, as Administrator of the estate of the plaintiff's husband. That neither the defendant No. 2 nor any other party in the said petition had opposed the appointment of the Ld. Sole Guardian as the Administrator. That even in the Appeals preferred against the said Order, nothing was pleaded against the Ld. Sole Guardian.

21. It is stated that the plaintiff has already filed her objections in the Test Cas. No. 1 of 2022, filed by the defendant No.2. It has been specifically pleaded by the petitioner therein that the Will is invalid in law, as the entire estate of her husband, as it stands today, is because of her *Stridhan*, which she had handed over to him as *custodia legis*. Thus, it has been pleaded therein that such a testamentary disposition in the Will warrants a belief that the Will is either forged or was executed under suspicious circumstances or when the plaintiff's husband did not have the requisite mental capacity to execute the same. It is stated that the probate petition and the said application under Section 247 of the Indian Succession Act, 1925, are pending adjudication before this Court.

22. It is stated that the plaintiff has provided a Schedule of properties along with the present suit over which she is seeking a declaration to an effect that she be declared as an owner of the said properties. Moreover, the plaintiff has also sought a temporary injunction against defendant No.2 from seeking possession and control

over the suit properties, in any form or manner, including her capacity as the executor of the forged/invalid Will.

SUBMISSIONS OF MR. SANDEEP SETHI ON BEHALF OF THE DEFENDANT NO.2

23. That the defendants have contested this suit. Mr. Sandeep Sethi, learned senior advocate, appearing on behalf of the defendant No.2 has challenged the maintainability of the present suit and submitted that the same must be rejected at the outset by this Court by exercising its powers under Order VII Rule 11 Code of Civil Procedure, 1908 ('CPC,1908').

24. Mr. Sethi argued that power to reject the plaint under Order VII Rule 11 of the CPC,1908, can be *Suo Moto* exercised by the Court. He relied upon the latest judgment passed by the Supreme Court in the case of *Patil Automation Private Limited & Others v. Rakheja Engineers Pvt. Ltd., 2022 SCC OnLine SC 1028*, and averred that on the presentation of the plaint and before issuance of summons, the court has to examine as to whether a suit has been duly instituted or not and where it is found that the plaint is barred by law under Order VII Rule 11(d) then the plaint should be rejected even without the issuance of the summons. He then submitted that it should be the duty of the court to reject the plaint before the issuance of the summons in case the court finds either/or that the plaint does not disclose any cause of action, the suit is barred by any law and/or the relief is undervalued or the plaint is written upon paper insufficiently stamped, i.e. the requisite Court fee has not been paid. To substantiate this contention, Mr. Sethi has relied upon the following set of judgments:

- a) *Madiraju Venkata Ramana Raju v. Peddireddigari Ramachandra Reddy* (2018) 14 SCC 1;
- b) *Christian Louboutin Sas v. Abubaker & Ors.*, 2018 (250) DLT 475;
- c) *Renu Khullar v. Aaron @ Arun Bhandari & Ors.*, 2018 SCC OnLine Del 9115;
- d) *Godfrey Phillips India Limited v. P.T.I Private Limited & Ors.*, 2018 SCC OnLine Del 8278;
- e) *Govind Narayan v. Shri Baheti Dharmshala & Ors.*, 2011 SCC OnLine Raj 1363;
- f) *Sopan Sukhdeo Sable and Others v. Assistant Charity Commissioner and Others*, (2004) 3 SCC 137;
- g) *Saleem Bhai and Others v. State of Maharashtra and Others*, (2003) 1 SCC 557;
- h) *Azhar Hussain v. Rajiv Gandhi*, 1986 (Supp) SCC 315;
- i) *T. Arivandandam v. T. V. Satyapal and Another*, (1977) 4 SCC 467.

25. He submitted that till date summons have not been issued to the defendants in the present suit and in the meantime, the plaintiff i.e., Satula Devi has passed away on June 12, 2022, thus the present suit has abated and deserves to be dismissed on this very ground.

26. Mr. Sethi has also argued that the present suit is barred by the contours of limitation. He contended that there is a gross delay of more than 50 years in claiming the relief in the present suit as the plaintiff only in the year 1971, handed over the gold to her husband and the present suit is filed in the year 2022. To substantiate this, he has relied

upon Article 58 of the Limitation Act, 1963 and averred that anyhow the relief of declaration has to be sought within three years from the date on which the right to sue first accrues and in the present case, admittedly, the gold in question was given by the plaintiff in the year 1971 and therefore the right to sue first accrued only in that year and thus the suit should be barred by limitation. Reliance has been placed upon a judgment of the Coordinate Bench of this Court in the case of, ***Vimal Chand Jain v. Sushila Rani Bhavnani & Ors., 2016 SCC OnLine Del 2332*** and a judgment of the Supreme Court in the case of ***Canara Bank v. P. Selathal and Others, (2020) 13 SCC 143*** to contend that the present suit is barred by limitation.

27. He further submitted that the plaint also does not disclose any factual or legal cause of action for the relief claimed by the plaintiff and thus the same should be rejected under Order VII Rule 11(a) of the CPC, 1908 for non-disclosure of the cause of action.

28. He then submitted that there is no customary or any statute law which converts the *Stridhan* into the properties which the recipient of the *Stridhan* may build out of the seed money of the *Stridhan*. It is submitted that in the event a lady delivers or entrusts her *Stridhan* to any person including her husband, the said *Stridhan* continues to be her property and she is liable to be restored with the said *Stridhan* or the value thereof. In the event, the plaintiff proves to have entrusted 4.5 Kgs of gold to her husband as alleged in the plaint, she will be entitled to be restored with the said gold or the value thereof, and nothing more; a fortiori, the various companies that the plaintiff's husband has built and established or other assets which have been

earned by him, do not automatically become the property of the plaintiff. Therefore, he submitted that the entire case set up in the plaint does not disclose any cause of action. To substantiate this submission, reliance has been placed upon the judgment of the supreme court in *Krishna Bhattacharjee v. Sarathi Choudhury*, (2016) 2 SCC 705.

29. He further submitted that the plaintiff's claim is even otherwise barred by her own admissions made in W.P.(C) No. 1271/2020, where she has pleaded that the properties held in the name her husband are his properties and that the properties left by him are his own estate. In view thereof, he argued that, the claim in the present suit is ex-facie barred by the principles of estoppel and acquiescence and thus the plaint deserves to be rejected under Order VII Rule 11(a) of the CPC, 1908.

30. He also submitted that a suit seeking declaratory relief without seeking any consequential relief is also not maintainable. He submitted that the plaintiff has sought a declaration that she is the owner of the suit properties as stated in the Schedule attached to the plaint. Furthermore, the plaintiff has also sought a declaration to the effect that the Will be declared as null and void. As per him, the plaintiff on May 05, 2022, filed an application being I.A. 8087/2022 under Order VI Rule 17 of the CPC, 1908, seeking amendment in the prayers of the present suit and only as an alternate prayer has sought to declare the said Will as null and void.

31. He then argued that the simplicitor declaratory relief without seeking the consequential relief of possession is barred by the rigours

Section 34 of the Specific Relief Act, 1963 and thus the plaintiff deserves to be rejected at the threshold. As per him, admittedly, the plaintiff is not in possession of the schedule properties and the Sole Guardian is in the possession of the same, therefore, he submitted that the plaintiff should have made a claim for an entitlement to the possession of the said properties and thus the plaintiff is barred by law for not claiming the said relief. To support this submission, he has relied upon the following judgments:

- a) *Venkataraja & Ors. v. Vidyane Doureradjperumal, (dead) through Legal Representatives & Ors., (2014) 14 SCC 502;*
- b) *Union of India v. Ibrahim Uddin & Anr. (2012) 8 SCC 148;*
- c) *Vinay Krishna v. Keshav Chandra, (1993) Supp 3 SCC 129.*

32. He further argued that the prayer 'b' of the suit which is made to declare that the Will made by the plaintiff's husband as null and void, is also not maintainable in view of the fact that the probate Court has the exclusive jurisdiction to decide on the validity of the Will. He argued that admittedly, Test Case No. 01/2022, seeking a probate of the Will is already pending adjudication before this Court. He submitted that the decision of a probate court is a judgment *in rem* and thus conclusively decides the validity of the Will in question. Therefore, according to him, the question of validity of the said Will can only be decided in the probate proceedings and therefore, the present suit challenging the validity of the Will is not maintainable in

law. Reliance has been placed on the judgment of the Supreme Court in *Chiranjilal Shrilal Goenka (deceased, through LRs.) v. Jasjit Singh & Ors. (1993) 2 SCC 507*.

33. He then argued that the alternate prayer seeking partition being conditional upon a declaration of invalidity of the Will dated July 18, 2011, is not maintainable. That the plaintiff by way of the amended plaint has sought an alternate relief to declare the Will dated July 18, 2011 as null and void on the basis of various inconsistencies and objections of the plaintiff and thereby partition the suit property as per law. It is submitted that the prayer for partition as set out in the amended plaint is conditional upon a declaration that the Will dated July 18, 2011, is null and void and therefore the said prayer is not maintainable in law. The Civil Court has no power to declare the Will as null and void and the relief of partition as framed in the amended plaint is not maintainable. Further, there are no averments in the plaint qua partitioning of the property and there is no disclosure of cause of action with respect to the same.

34. It is submitted that admittedly, the probate petition being Test Case No. 1 of 2022 seeking probate of the Will dated July 18, 2011, is pending before this Court and the plaintiff, defendant No.1 and defendant No.3 herein have filed their objections to the same. It is submitted that till such time the probate petition is decided, there is no cause of action to claim the relief of declaration or partition and the suit is premature and deserves to be dismissed. Reliance for the same is placed on the judgment passed by this Court in the case of *Priyanka Vivek Batra v. Neeru Malik, 2008 SCC OnLine Del 917*.

35. Furthermore, the plaintiff has sought a declaration that she is the actual owner of the shares which were held by late Dr. Mahendra Prasad in various companies viz. M/s Aristo Pharmaceuticals Pvt. Ltd., M/s Aristo Laboratories Pvt. Ltd., M/s Mapra Laboratories Pvt. Ltd. It is submitted that the relief qua the ownership of shares and rectification of register of members of a company is governed by Section 59 of the Companies Act, 2013 and the exclusive jurisdiction to entertain such a claim lies with the National Company Law Tribunal. Further, the prayers in the plaint are barred by Section 89(8) of the Companies Act, 2013. The plaintiff ought to have declared to the companies involved that she is the “beneficial owner” of the shares held in the name of late Dr. Mahendra Prasad. The claim of being the beneficial owner having been made belatedly with a delay of more than 50 years is barred by Section 89(8) of the Companies Act, 2013 and the same is not enforceable in law. Further, as per Section 430 of the Companies Act, 2013, there is an express bar against the Civil Court entertaining any suit or proceeding in respect of any matter which the National Company Law Tribunal is empowered to determine by or under the Companies Act, 2013. Therefore, the prayer seeking a declaration qua the shares of late Dr. Mahendra Prasad is barred by law and the plaint deserves to be rejected on this very ground.

36. He further submitted that the present suit is also liable to be dismissed for non-payment of ad valorem court fee. Admittedly, the present plaint has been valued at ₹5,000 Crores. However, the plaintiff has only paid a court fee of ₹1,020/- at the time of filing the plaint. It is

therefore submitted that ex-facie, the suit is liable to dismissed for non-payment of ad valorem court fee. To contend this, reliance has been placed upon the following judgments:

- a) *Haryana Urban Development Authority & Ors. v. Orchid Infrastructure Developers Pvt. Ltd.*, (2017) 4 SCC 243;**
- b) *S. Manjinder Singh v. Smt. Krishna Bhat and Ors.* 2013 SCC OnLine Del 4512;**
- c) *M/s. Maiden Pharmaceuticals Ltd. V. M/s. Wockhardt Ltd.*, (2008) SCC OnLine Del 804.**
- d) *M/s. Commercial Aviation and Travel Company & Ors. v. Vimla Pannala* (1988) 3 SCC 423.**

37. It is submitted that on a plain reading of the prayers in the plaint and the amended plaint it is abundantly clear that, prayer 'b' is consequential to prayer 'a' and the alternate prayer 'BA' is consequential to prayer 'b'. Therefore, the suit as framed being a suit for declaratory and consequential relief by virtue of Section 7(iv)(c) of the Court Fees Act, 1870, the valuation has to have a rational relation to the declaratory and consequential relief sought by the plaintiff. If the reliefs have a monetary value, which is admittedly ₹5000 Crores as per the averments in the plaint, the plaintiff is obligated to pay the court fee for the same. Both prayer 'a' and prayer 'b' have been valued at ₹5000 crore and plaintiff has to have paid court fee on the same.

38. That the Court Fees paid by the plaintiff in the present suit is only ₹1,020/- and not the Court Fees on the valuation of the suit properties i.e., ₹5000 crores. Therefore, the plaint deserves to be

rejected on this ground alone. Reliance has been placed upon the following judgments to contend the same:

- a) *Mahant Purshottam Dass & Others v. Har Narain & Anr.*, *ILR (1978) 1 Delhi 457*;
- b) *Rampur Distillery & Chemicals Co. Ltd. v. Union of India*, *(1995) 57 DLT 642*;
- c) *Surender Arora v. P.N. Mehta & Ors.*, *(1998) 71 DLT 744*.

39. That the application seeking selective transposition of defendant Nos.1 and 2C and 3 as plaintiff is not maintainable. As such selective and mala fide transposition excludes several legal heirs of the deceased plaintiff and therefore the same deserves to be dismissed *in limine*.

40. In light of the above facts and circumstances, it is prayed that this Court may reject the plaint at the threshold in exercise of powers under Order VII Rule 11 of the CPC, 1908.

SUBMISSIONS OF MR. RAJIV NAYAR ON BEHALF OF THE DEFENDANT NOS.2A & 2B

41. Whereas, Mr. Rajiv Nayar, learned senior advocate, appearing on behalf of defendants Nos.2A and 2B, has also contested the maintainability of the present suit on multiple grounds. Substantially, the grounds on which Mr. Nayar has challenged the maintainability of the present suit are identical with that of Mr. Sethi's. Nevertheless, Mr. Nayar has also made some additional and distinction submissions, which are in the following manner.

42. He primarily submitted that the present suit has not been duly instituted by the plaintiff specifically in conformity with the provisions

of Section 26 and 27 of the CPC, 1908 and accordingly, deserves to be dismissed at the threshold, even without the issuance of summons. To substantiate this submission, Mr. Nayar pointed out that the plaintiff, during the course of a hearing, stated before this Court that a suit cannot be allowed to be dismissed without the issuance of summons and thus a matter of course, this Court is bound to issue summons. He submitted that the said argument is bereft of any merit, since as per Section 26 and 27 of CPC, 1908, only if a suit is properly instituted then only the Court is required to issue summons. He further argued that Order VII Rule 1 of CPC, 1908, prescribes the format in conformity which the plaint has to be instituted and as such the said Order mandates that the plaint in addition to the other things has to disclose in particular “(e) the facts constituting the cause of action and when it arose”. Therefore, the suit should be filed within the period of limitation in order to sue on the basis of the cause of action and if the suit is not filed within the prescribed period or does not disclose a cause of action, the suit is liable to be dismissed at the threshold.

43. He further submitted that the plaintiff has also failed to seek the leave of this Court under Order II Rule 2 of the CPC, 1908. Therefore, the plaintiff not having taken the leave and liberty of the Court under Order II Rule 2 CPC, 1908, along with the present suit, now, cannot claim for any other consequential relief or particularly the relief of possession, by way of a new suit at the later stage.

44. Furthermore, he submitted that the plaintiff has valued the present suit at ₹5000 crores and as per Section 7 (iv) (c) of the Court Fees Act, 1870, the valuation of the relief in cases falling within the

scope of Section 7(iv) (c), should be done by the plaintiff on the said valuation and the Court Fees ought to have been paid by the plaintiff, accordingly. He pointed out that the Court Fees paid by the plaintiff in the present suit is only ₹ 1,020/- and not as per the valuation of the suit properties which is ₹5000 crores.

45. He submitted that the argument of Mr. Vikas Singh that the Court Fees is payable only on the valuation of the declaratory relief sought by the plaintiff is totally devoid of any merits. To substantiate this, reliance has been placed upon the full-bench judgment of the Punjab and Haryana High Court in the case of *Niranjan Kaur v. Nibigan Kaur, I.L.R.(1982) 1 Punjab and Haryana 142 (FB)*. He submitted that going by the ratio of the afore-said judgment, the court fees should have been calculated on the basis of the main relief sought by the plaintiff and since in the present case, the claim of the plaintiff is over the estate her husband and since the valuation of the same is approx ₹5000 crores, hence, the Court Fees paid by the plaintiff is grossly insufficient and on this ground alone, the present suit should be dismissed.

46. He averred that it is a settled law that the issue of court fees must not be left to be decided for a later stage and instead should be determined at the first instance as held in the judgment passed by the coordinate bench of this Court in the case of *Dr. Zubair Ul Abidin & Ors. v. Sameena Abidin @ Sameena Khan, 2014 SCC OnLine Del 3575*. He submitted that the present suit accordingly deserves dismissal, at this stage itself, for non-payment of sufficient court fees.

47. He submitted that without prejudice to the fact that plaintiff has not sought any consequential relief, since the main prayer for declaration is barred by limitation therefore any consequential prayer will also be barred by limitation.

48. The defendants submit that if it is the case of the plaintiff that the alternate prayer of partition is the consequential relief sought and therefore Section 34 of the Specific Relief Act, 1963 does not apply, in view of the judgment in the case of *Padhiyar Prahladi Chenaji (deceased) through LRs. v. Maniben Jagmalbhai, 2022 SCC Online SC 258*, the said alternate prayer as a consequential relief will also not be maintainable.

49. Additionally, Mr. Nayar has also relied upon the judgment passed by the coordinate bench of this Court in *Snehlata (Through Legal Heirs) Sai Chanakya Maverick v. Priti Tandon and Anr., 2018 (169) DRJ 692*, to contend that the simplicitor suit for declaration, devoid of any consequential relief, cannot be maintained in the court of law. He also took the aid of Section 34 of the Specific Relief Act, 1963 to the effect that the said Section clearly bars such types of simplicitor suits. Thus, he submitted that the plaintiff should have sought a consequential relief of possession by paying accordingly the *ad valorem* court fees as per the valuation of the Suit properties.

50. Reliance has also been placed by Mr. Nayar on the judgment of the Coordinate Bench of this Court in the case of *Archie Comic Publications, Inc. v. Purple Creations Pvt. Ltd. & Ors. in CS (OS) 1420/2005* dated *April 22, 2008* ('*Archie Comic I*') and on an appeal arising out of the aforesaid judgment in the case of *Archie Comic*

Publications, Inc. v. Purple Creations Pvt. Ltd. & Ors., 2010 SCC OnLine Del 3101, ('Archie Comic II'), to contend that when a Court does not have a territorial jurisdiction to entertain a suit, as a corollary, it does not get the jurisdiction to entertain the subsequently filed amendment application. He seeks the rejection of the plaint.

SUBMISSIONS OF MR. VIKAS SINGH FOR PLAINTIFF/ DEFENDANT NOS. 1, 2C AND 3

51. Mr. Vikas Singh has contested the arguments raised by Mr. Sethi and Mr. Nayar. He has submitted that it cannot be said that with the demise of the plaintiff, the present suit has been automatically abated and thus deserves to be dismissed. He submitted that even after the plaintiff's demise, the right to sue survives on her sons, being her legal heirs. He averred that in the judgment of the Supreme Court in *M. Veerappa v. Evelyn Sequeria & Ors. (1988) 1 SCC 556*, it has been held that a right to sue survives even after the death of the plaintiff, if the remedy sought is *in rem*. He submitted that the Supreme Court has held that "*the maxim actio personalis cum moritur persona have been held inapplicable only in those cases where the injury caused to the deceased person tangibly affects his estate or has caused an accretion to the estate of the wrongdoer*". So, he submitted that as per the afore-said ratio, the cause of action survives when the injury caused to the deceased person has tangibly affected his estate or has caused an accretion to the estate of the wrongdoer.

52. He submitted that the cause of action for filing the present suit only arose on December 27, 2021, when the plaintiff's husband had passed away and it again arose on January 03, 2022, when the petition

seeking probate of the Will of the plaintiff's husband was filed by defendant No. 2. He submitted that the plaintiff trusted her husband with her *Stridhan* and it is through that *Stridhan* only that her husband has built the entire business empire. He further submitted that before the discovery of the Will, in which the plaintiff has been ousted from her husband's estate, without a reasonable explanation, the plaintiff had no reason to claim her *Stridhan* and it is only after the filing of the probate petition under which defendant No. 2 is claiming to be the Executor, the plaintiff's right of ownership over her husband's property had come under a threat. Thus, as per him, the present suit has been filed well within limitation.

53. Further, cause of action w.r.t. subsequent prayer of seeking 1/4th each partition of estate of late Dr. Mahendra Prasad arose only after his demise on December 27, 2021, as till Dr. Mahendra Prasad was alive he was the absolute owner of his estate. In ***Krishna Bhattacharjee V. Sarathi Choudhary & Ors. (2016) 2 SCC 705***, it has been held *Stridhan* is the exclusive property of the wife and the husband is the custodian of the wife's property.

54. It is submitted that through the present suit, the plaintiff is also seeking the consequential relief of partition along with declaratory reliefs. He submitted that the plaintiff has sought a decree for declaration as the owner of the suit properties but has not sought any consequential relief with respect to possession of the suit properties as the said properties are under the guardianship of the Ld. Sole Guardian as the *custodia legis* of the suit properties. He pointed out that vide Order dated July 11, 2022 passed in W.P. (C) 1271/2020, this Court

had passed the direction for the Ld. Sole Guardian to continue ensuring that the suit properties are not frittered away.

55. It is submitted that the plaintiff was in joint possession of the property situated at Vasant Vihar along-with her husband and that property formed the part of the corpus her husband's estate, at the time of filing of the suit and thus it was not required to pay *ad valorem* court fees. He submitted that the coordinate bench of this Court in ***Saroj Salkan v. Capt. Sanjeev Singh & Ors., 2008 SCC OnLine Del 1278***, has held that when the plaintiff is found to be in joint possession of the property of which a partition is sought then the plaintiff is only obligated to pay the fixed Court Fee. Reliance has been further placed upon the judgment of the Karnataka High Court in ***M.V. Chayapathi Rao & Ors v. M.V. Sathyanarayanarao & Anr., 1988 SCC OnLine Kar 496***, to contend that the full court fees can even be paid at the time of Final Decree in a suit for Partition.

56. It is further submitted that the proceedings of a probate case and a suit for partition can be clubbed together. He submitted that the coordinate bench of this Court in ***Praveer Chandra v. Aprajita & Ors., 2019 SCC OnLine Del 10820***, had held that in a civil suit where a Will is also in issue, the Court adjudicating such a civil suit can look into the suspicious circumstances surrounding the Will in question as the scope of the proceedings in a partition suit is broader than that of a probate suit. He further submitted that this Court in the afore-said judgment had also referred to its own judgment in the case of ***Ravi Khanna v. Pankaj Khanna, 152 (2008) DLT 484***, wherein it is held that the probate court does not decide the title of the property

stipulated in a will and also that whether or not a testator has a right to bequeath such property and it is the Court, where the suit for possession and partition of the property is pending, decides the rights of the parties qua the property stipulated in the will. It was further submitted that the Supreme Court in *Shamita Singh & Anr. v. Rashmi Ahluwalia & Anr.*, 2020 (7) SCC 152, while referring to this Court's decision in *Praveer Chandra (supra)* had held the proceedings in a probate case and a suit for partition can be clubbed together. Reliance has also been placed upon another judgment of the Supreme Court in the case of, *Nirmala Devi v. Arun Kumar Gupta*, (2005) 12 SCC 505, to contend the same.

57. It is also submitted that the plaintiff, through the present suit, has sought the declaratory relief of ownership as well as the consequential relief of partition with respect to the suit properties. It is further submitted that the plaintiff has sought injunction against the defendants from seeking possession and control of the suit properties of which declaration of ownership and partnership has been sought in the main suit. So, as per him, the interim reliefs sought in the present suit are well within the prayers of the main suit. He also submitted that the defendants are only trying to raise the issue with respect to the fee of the lawyer sought by the plaintiff, however, as per Mr. Vikas Singh, such a prayer is borne from the facts of the present plaint and therefore, there is no basis for opposing the said relief and moreover he submitted that the interim reliefs sought by the plaintiff are also not identical with the final relief prayed for in the main suit.

58. It is also submitted that the defendants cannot object to the transposition of defendants nos. 1, 2C and 3 as the plaintiffs as being selective.

59. It is apposite to point out that Mr. Vikas Singh has also, on behalf of the said defendants, countered the contentions raised by the counsels of the defendants in the manner stated hereinafter.

60. It has been specifically pleaded that the defendants have not dealt with the contentions raised by the plaintiff in the amended plaint which was filed on May 05, 2022 (i.e., before the passing away of the plaintiff on June 12, 2022) through an application under Order VI Rule 17 seeking amendment of plaint bearing, I.A. No. 8087/2022.

61. It is also submitted that the defendants have abused the process of law by dragging the present case even before the issuance of notice and arguing it for 6 hearings. In the process, the original plaintiff had lost her life and thus could neither bear the fruits of the present case nor deposed in the present case, which could have been most essential for the present case.

62. It is also submitted that the judgment relied upon by the contesting defendants of ***Chiranjilal Shrilal Goenka (deceased through LRs) (supra)*** in paragraph 15 specifically states that a probate court cannot decide the question of a title qua the property stipulated in a Will and only a civil court can decide the same and as such the judgment in ***Chiranjilal Shrilal Goenka (deceased through LRs) (supra)*** has been relied upon extensively by the Supreme Court in other judgments too. Further, it was pointed out that in the case of ***Kanwarjit Singh Dhillon v. Hardyal Singh Dhillon & Ors., (2007) 11***

SCC 357, the relevant portion of *Chiranjilal Shrilal Goenka (deceased through LRs) (supra)* was also relied upon the Supreme Court. He further submitted that the proposition that the scope of a suit for partition is broader than a probate proceeding has been held by the Supreme Court in the case of *Praveer Chandra (supra)*, which has been approved by the Supreme Court in *Shamita Singh (supra)*. It was particularly pointed out that the judgment relied upon by Mr. Sethi in *Priyanka Vivek Batra (supra)*, to establish that a suit for declaration has to await the outcome of a parallel probate proceeding is erroneous and misleading in law. He submitted that such an argument has been raised before this Court to mislead this Court and it is submitted that the facts of *Priyanka Vivek Batra (supra)* is entirely different from the facts of the present case. It is further submitted that in *Priyanka Vivek Batra (supra)*, the executor under the Will was claiming the ownership of the suit property and that too without seeking a probate of the Will and it was only in such circumstances that the Court directed that the parties to that case to await the outcome of the probate case and such is not the case here.

63. Mr. Vikas Singh submitted that even if this suit is valued at ₹5000 crores, the plaintiff has to pay the Court Fee on the valuation amount of the suit. According to him, in the present case, the plaintiff was not required to pay the *ad valorem* court fee at the time of filing of the suit for the following reasons:

- a) that the plaintiff, i.e. late Satula Devi had originally filed a suit for declaratory relief w.r.t. to title of the suit properties and had also informed this Court that all the suit properties,

except the one which is in her possession, are in possession of Justice Rajiv Sahai Endlaw (Retd.), who has been appointed as the Sole Guardian of the estate of the plaintiff's husband by this Court in W.P. (C) 1271/2020 filed by the plaintiff herself. Therefore, it was submitted that the possession of other properties was not sought by the plaintiff. He submitted that in terms of the judgment passed by the Supreme Court in *Shailendra Bhardwaj & Ors. v. Chandra Pal & Anr., (2013) 1 SCC 579*, it has been held that when only a declaration suit is independently filed by the plaintiff without seeking any possession thereof, then Section 7 (iv) (c) of the Court Fees Act, 1870 would not be applied. He further submitted that Article 17 (iii) Schedule II (schedule for fixed court fee) of the Court Fees Act, 1870 specifically stipulates that in a case an independent prayer for declaration is sought by the plaintiff then only a fixed court fee is required to be paid. So, he argued that in the facts and circumstances of the present case, Section 7 (iv) (c) of the Court Fees Act, 1870 is not attracted and thus the plaintiff is liable to pay only a fixed court fees in accordance with Article 17 (iii) Schedule II of the aforesaid Act.

b) that the plaintiff as an alternative prayer has already sought a declaration that the Will dated July 18, 2011, be declared as null and void, as well as the consequential relief of partition of the suit property, vide I.A. No. 8087/2022, seeking amendment of the plaint. He submitted that in terms of the

judgment of the Karnataka High Court in ***M.V. Chayapathi Rao & Ors (supra)***, the full court fee in a suit for partition can also be paid after the passing of a final decree. It is further submitted that the consequential prayer sought by the plaintiff is in relation to the Will and not the declaration of title, therefore, the court fee is not required to be paid at the present stage and would only be paid once the suit is decreed in favour of the plaintiff.

- c) that the plaintiff, at the time of filing of the present suit was in possession of one of the suit properties and thus was not required to pay *ad valorem* court fees in terms of the judgment of this Court in ***Saroj Salkan (supra)*** wherein it has been held that only fixed court fee is payable, when the plaintiff is found to be in joint possession of the property of which the partition is sought. He argued that the Mr. Sethi's reliance on this Court's judgment in ***Rampur Distillery & Chemicals Co. Ltd. (supra)***, to contend, if the relief sought by the plaintiff is capable of specified valuation then that will be the valuation for payment of court fee and as such the *ad valorem* fee will be payable in the facts and circumstances of the present case. He submitted that Mr. Sethi has failed to appreciate the fact that the definite value of the present suit cannot be ascertained as the assets as on date are still in the name of plaintiff's husband and are in multiple numbers. Therefore, it is impossible to give a definite value to the same. He contended that interestingly,

the defendants have also not paid any court fee in the probate case and yet they are seeking payment of the full court fee from the plaintiff in the present case.

64. It is also submitted that the plaintiff is entitled to claim the present assets created by her husband out of her *Stridhan*. To substantiate it has been argued that the defendant's contention to the effect that the plaintiff had never claimed the ownership of the suit property created out of her *Stridhan* in the Habeas Corpus proceedings in W.P. (Crl.) 2255 of 2019 is entirely misplaced as the same was filed by her son, Mr. Ranjit Sharma when she was held in captivity by Ms. Uma Devi. It is further submitted that at the time of filing of the guardianship proceedings in W.P. (C) 1271/2020, the plaintiff had no necessity to mention about the assets of her husband and such a necessity only arises when the plaintiff got an inkling about the evil designs of Ms. Uma Devi and the defendant No.2 regarding usurpation the wealth of her husband. It is submitted that the affidavit stating that the corpus of her husband's business was created out of her *Stridhan* had already been filed by the late plaintiff in the afore-said petition. Subsequently a statement was also given by the late plaintiff before the Ld. Single judge in the judgment dated October 29, 2021, in W.P. (C) 1271/2020 and it was recorded as under:

"31. Mrs. SD could comprehend and answer the questions of the Court with the help of a lady nurse. She expressed that she was comfortable in the Vasant Vihar flat. Her statement, as recorded in the order is relevant and is set out below: -

"8. Mrs. SD has also joined the Court proceedings today. Though the proceedings are online, she could

*comprehend and could answer the questions of the Court, with the help of the lady nurse who was present with her. It appears that she does have some hearing impairment. **She stated that when she was married to the DMP her father had given 4.5 kilos of gold, from which the DMP started his business.** She stated that she has three sons and one son has died. She blames Ms. UD and Mrs. KR for the death of her son.....”*

It is further submitted that the plaintiff stood ousted from the assets of her husband because of the conspiracy of Ms. Uma Devi and the defendant No.2 who had deliberately concealed the deteriorating mental condition of the plaintiff's husband in order to extort his money and the same stands proven from paragraph 263 of the judgment passed in W.P. (C) 1271/2020. Paragraph 263 of the said judgment is reproduced as follows:

*“263. Even in respect of the medical treatment of Mr. DMP, it was only per chance that Mr. DMP was diagnosed with FTD during the proceedings before the Id. Division Bench. **Until then, it seems that none of the family members were informed of his mental condition and no care or treatment in respect of FTD was provided to him.** This may have been due to various apprehensions in respect of his official position as a Member of Parliament. **However, since Ms. UD and Mrs. KR were exclusively living with Mr. DMP since 2016-2017, the non-disclosure of his mental condition and non administration of required medicines shows that Mr. DMP was clearly deprived of proper medical treatment for his mental condition, until his FTD diagnosis in 2019.**”*

65. It is further submitted that the sole motive of Ms. Uma Devi and the defendant No.2 has always been to usurp assets of the

plaintiff's husband. It is submitted that in the year 2020 and 2021, despite the *status quo* orders dated June 04, 2021 and February 26, 2020 passed by this Court in W.P. (C) No.1271 of 2020, wealth from the accounts of the plaintiff's husband was taken out and an FDR was created by one Mr. TR Narayanan at the instructions of Ms Uma Devi and the defendant No.2 and also nominations in the term-deposits of the plaintiff's husband were made in the name of Ms. Uma Devi, the defendants Nos.2, 2A and 2B. Further, it is submitted that they changed the nominations in blatant violation of this Court's aforesaid orders, wherein *status quo* with respect to the properties of the plaintiff's husband had been directed by this Court. He submitted that the said nominations were changed purely because in the Will it was stipulated that the FDR will go in the name of the nominee. It is submitted that in 2020, a total number of 69 nominations were made in favour of defendant No.2A and 68 nominations were made in favour of defendant No. 2. Further in 2021, 42 nominations each were made in the favour of defendant Nos. 2A and 2B.

66. That in *M. Veerappa (supra)*, the Supreme Court has interpreted Section 306 of the Indian Succession Act, 1925 wherein it has been laid down that a claim for or against an executor may continue after death of a party. Section 306 of the Indian Succession Act, 1925 states that:

“306. Demands and rights of action of or against deceased survive to and against executor or administrator.—All demands whatsoever and all rights to prosecute or defend any action or special proceeding existing in favour of or against a person at the time of his decease, survive to and against his

executors or administrators; except causes of action for defamation, assault, as defined in the Indian Penal Code (45 of 1860), or other personal injuries not causing the death of the party; and except also cases where, after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory.”

67. That from the afore-said provision, it is evident that right to sue for and against an executor also survives the deceased person. The Supreme Court, while interpreting the said provision held that a right to sue survives after the death of the plaintiff if the remedy sought is in rem and that “*the maxim action personalis cum moritur persona* have been held inapplicable only in those cases where the injury caused to the deceased person tangibly affected his estate or has caused an accretion to the estate of the wrongdoer”. The cause of action in the present suit has arisen against defendant Nos. 2, 2A and 2B and it is highly preposterous to contend that they should also be transposed as plaintiffs.

68. That in ***Rajkumar Gurwara (Dead) Thr. LRs v. M/s S.K. Sarwagi & Co. Pvt. Ltd., AIR 2008 SC 2303***, it was laid down that amendment of pleadings is permissible before commencement of trial. It is submitted that the judgment relied upon by the defendant Nos. 2A and 2B in ***Archie Comic Publications Inc. v. Purple Creations Pvt.Ltd. & Ors. (2010) 172 DLT 234 (DB)*** deals with the proposition of law that if the plaint does not disclose jurisdictional facts, it cannot be amended which is not relevant in the context of the present facts and circumstances. In paragraph 23 of the said judgment, it has been observed that “in case of unclear or ambiguous pleadings, the same

may be allowed to be amended to clarify the already pleaded facts till the same does not give rise to addition of a new cause of action or pleading or new facts”. It is his submission that in the present case, the plaintiff had mentioned about the invalidity of the will in paragraph 4 (xviii) of the original plaint and in para 4 (xviii-A) of the amended plaint. Further, the pleading w.r.t. cause of action in the original is at paragraph 5, which was clarified in para 4-A of the amended plaint. Therefore, the plaintiff has only clarified the foundational facts in the amended suit.

69. So, in light of the afore-said submissions, Mr. Vikas Singh prayed before this Court to issue summons in the present suit and in the application for amendment of the plaint and also sought leave of this Court to exempt the plaintiff from payment of the Court Fee and concurrently prayed that for imposition of exemplary costs on the defendants.

ANALYSIS

70. Having heard the learned counsel for the parties and perused record, at the outset I may state that the suit is filed by Satula Devi wife of Late Dr. Mahendra Prasad. She has expired on June 12, 2022. A copy of Death Certificate dated June 12, 2022, has been brought on record vide I.A.12310/2022. The same is taken on record.

71. An objection was taken by Mr. Sethi that because of the demise of Satula Devi, the present suit has abated.

72. At this stage, it is necessary to reproduce the prayers as made by late Satula Devi in the plaint ,which are as follows:

“a) Pass a Decree for Declaration in favour of the Plaintiff and against the Defendant declaring the Plaintiff as owner of the suit properties as stated in the Schedule Attached with the instant suit.

b) Pass a Decree declaring the Will dated 18.07.2011 as null and void as the Plaintiffs husband could not have bequeathed the scheduled properties as the Plaintiff was the rightful owner of the same, in light of the fact that the entire estate of Dr. Prasad as it stands today was created by using the corpus of the Stridhan of the Plaintiff.

c) Any other relief which this Hon’ble Court deems appropriate and suitable in the interest of justice and in the facts and circumstances of the case be also granted to the Plaintiff.”

73. On the plea of Mr. Sethi that the suit has abated, Mr. Vikas Singh, has drawn the attention of the Court to the applications being I.A .10458/2022, filed under Order XXII Rule 10A read with Section 151 of CPC, 1908 and I.A. 12310/2022, filed under Order XXII Rule 3 read with section 151 of CPC, 1908, wherein, the following prayers are made:-

PRAYERS IN I.A.10458/2022

“a. Allow the Application by transposing Defendant No. 1 and Defendant No. 2C and Defendant No. 3 as Plaintiffs in the present suit;

b. Pass any other order (s) that this Hon’ble Court may deem fit.”

PRAYERS IN I.A.12310/2022

“a. Allow the legal heirs of the Plaintiff, i.e. Mr. Rajiv Sharma, Mr.Ranjit Sharma and Ms. Mahadevi Bhagwati to be substituted as Plaintiff in the captioned suit;

b. Pass any other order (s) that this Hon’ble Court may deem fit.”

74. Suffice to state, prayers in both the above applications are primarily for transposition and to substitute defendant Nos.1, 2C and 3, as plaintiff(s)/Legal Representatives in the captioned suit. It is necessary to mention herein that the application being I.A.10458/2022, was filed by the counsel for the plaintiff without signature on the application and supporting affidavit of the above defendants. Nonetheless, the application being, I.A. 12310/2022, having been filed, subsequently, by Ranjit Sharma (defendant No.3), along with an affidavit in support of the application, the application being I.A.10458/2022, has become infructuous. The application being, I.A. 10458/2022 is disposed of as infructuous.

75. As an issue has been raised by Mr. Sethi that the present suit has abated and also that the prayer in the application being I.A. 12310/2022, is for substitution by defendant Nos.1, 2C and 3, it is important to decide this application at the first instance.

76. The submission of Mr. Sethi on this application is primarily that the application has been filed seeking selective substitution of defendant Nos.1, 2C and 3 and as such not maintainable. In fact, it is his plea that such a selective and *mala fide* substitution excluding several legal heirs of the deceased Satula Devi deserves to be dismissed *in limine*.

77. On the other hand, Mr. Vikas Singh has contested the plea by stating, it cannot be said with the death of Satula Devi, the suit shall abate automatically. According to him, even after the death of Satula Devi, the right to sue survives on her sons, being her legal heirs. In

support of his submission, Mr. Vikas Singh has relied upon the judgment of the Supreme Court in *M.Veerappa (supra)*.

78. I am in agreement with the submission made by Mr. Vikas Singh that on the death of Satula Devi, right to sue would survive in favour of her legal heirs because if Satula Devi were to succeed in the suit, then the benefit thereof, would enure in favour of the above three defendants. On selective substitution, surely legal heirs, whose interest is not common to the above defendants, shall not seek substitution. The Supreme Court in the case of *M.Veerappa (supra)* in paragraphs 6 and 10, on which reliance has been placed by Mr. Vikas Singh, has stated as under:

“6. Even at the threshold of the judgment we may say that the ratio followed by the High Court is not a correct one. Section 306 of the Succession Act, 1925 which corresponds to Section 89 of the Probate and Administration Act, 1881, sets out the rights of Executors and Administrators to continue actions of or against a deceased person. Section 306 which is almost a reproduction of Section 89 in the earlier Act reads as follows:

“306. Demands and rights of action of, or against deceased survive to and against executor or administrator.—All demands whatsoever and all rights to prosecute or defend any action or special proceeding existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators; except causes of action for defamation, assault, as defined in the Penal Code, 1860, or other personal injuries not causing the death of the party; and except also cases where, after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory.”

Insofar as the rights of a legal representative to proceed with a suit filed by a deceased plaintiff is concerned, Order 22 Rules 1 and 3(1) govern the matter. They read as under:

“1. The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives.

3. (1) Where one of two or more plaintiff's dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or sole plaintiff or sole surviving plaintiff dies and the right to sue survives, the court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.”

These provisions of law have come up for consideration in a number of cases before several High Courts. The controversy in all the cases either under Section 89 of the Probate and Administration Act, 1881 or under Section 306 of the Indian Succession Act, 1925 centred round the meaning to be given to the words “other personal injuries not causing the death of the party”. Barring the Calcutta High Court and that too in one reported case only and the Rangoon High Court in one decision, other High Courts have uniformly taken the view that the words “personal injuries” do not mean injuries to the body alone but all injuries to a person other than those which cause death and that the relevant words must be read ejusdem generis with the words “defamation and assault” and not with the word “assault” alone. It would suffice for our purpose if we set out the reasons given in the Full Bench decision of the Madras High Court in Rustomji Dorabji v. W.H. Nurse [ILR 44 Mad 357] and merely give the citations of the other decisions where the same view has been taken. In Rustomji Dorabji v. W.H. Nurse [ILR 44 Mad 357] , Coutts Trotter, J. speaking for himself and Ayling, J. set out the law as follows:

“We are therefore driven to the conclusion that the Act must be supposed to have envisaged a logically coherent class of causes of action, and that result can only be

achieved by construing 'personal injuries' as meaning not 'injuries to the body' merely, but injuries to the person in Blackstone's sense, other than those which either cause death or tangibly affect the estate of the deceased injured person or cause an accretion to the estate of the deceased wrongdoer. In effect, we think that the words which we have to construe are ejusdem generis not merely with the last preceding word 'assault', but with the two preceding words 'defamation' and 'assault' "

(emphasis supplied)

Kumaraswami Sastri, J., the third judge in the Full Bench, in his concurring judgment gave his reasons as under:

"If the words were simply 'all personal injuries not causing the death of the party' and omitted defamation or assault, it may be argued that personal meant only physical and that causes of action for defamation and other similar injuries survived. The legislature took two types of personal injuries, one physical and the other not, and used them by way of illustration of what it meant to exclude. In this view, the words 'other personal injuries not causing the death of the party' must be read with 'defamation' and 'assault'.

There has been a conflict of authority on the question referred. In Punjab Singh v. Ramautar Singh [AIR 1920 Pat 841 : (1919) 4 Pat LJ 676] it was held by the Patna High Court that the words 'other personal injuries not causing the death of the party' in Section 89 of the Act are ejusdem generis not only with assault but also with defamation and include malicious prosecution. The same view has been held by the Madras High Court in Gadiji Mareppa v. Firm of Marwadi Vannajee Vajanjee [(1917) 38 IC 823] and Marwadi Mothiram v. Samnaji [(1916) 31 MLJ 772] . A contrary view was taken in Krishna Behari Sen v. Corporation of Calcutta [ILR 31 Cal 993 : 8 CWN 745] where the learned Judges differed from Justice

Henderson, the trial judge, and held that to use the words other personal injuries not resulting in death in connexion with an action for defamation or malicious prosecution would be straining the language used by the legislature and placing on it an unnatural and forced construction. In Punjab Singh v. Ramautar Singh [AIR 1920 Pat 841 : (1919) 4 Pat LJ 676] , Dass, J., who was a member of the Calcutta Bar for several years observes that in his experience the case has never been followed subsequently in the Calcutta High Court.

I would follow Punjab Singh v. Ramautar Singh [AIR 1920 Pat 841 : (1919) 4 Pat LJ 676] and Marwadi Mothiram v. Samnaji [(1916) 31 MLJ 772] , and hold that a suit for damages for malicious prosecution abates.”

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“10. The maxim “actio personalis cum moritur persona” has been applied not only to those cases where a plaintiff dies during the pendency of a suit filed by him for damages for personal injuries sustained by him but also to cases where a plaintiff dies during the pendency of an appeal to the appellate court, be it the first appellate court or the second appellate court against the dismissal of the suit by the trial court and/or the first appellate court as the case may be. This is on the footing that by reason of the dismissal of the suit by the trial court or the first appellate court as the case may be, the plaintiff stands relegated to his original position before the trial court. Vide the decisions in Punjab Singh v. Ramautar Singh [AIR 1920 Pat 841 : (1919) 4 Pat LJ 676] , Irulappa v. Madhava [(1916) 31 MLJ 772] Maniramlala v. Chattibai [AIR 1937 Nag 216 : ILR 1938 Nag 280] , Baboolal v. Ramlal [AIR 1952 Nag 408] and Melepurath Shankunni Ezhuthassan v. Thekittil Geopalankutty [(1986) 1 SCC 118 : AIR 1986 SC 411] . In Palaniappa Chettiar v. Rajah of Ramnad [ILR 49 Mad 208] , and Motilal v. Harnarayan [AIR 1923 Bom 408 : 25 Bom LR 435 : ILR 47 Bom 716] it was held that a suit or an action which

has abated cannot be continued thereafter even for the limited purpose of recovering the costs suffered by the injured party. The maxim of actio personalis cum moritur persona has been held inapplicable only in those cases where the injury caused to the deceased person has tangibly affected his estate or has caused an accretion to the estate of the wrong-doer vide Rustomji Dorabji v. W.H. Nurse [ILR 44 Mad 357] and Ratanlal v. Baboolal [AIR 1960 MP 200] as well as in those cases where a suit for damages for defamation, assault or other personal injuries sustained by the plaintiff had resulted in a decree in favour of the plaintiff because in such a case the cause of action becomes merged in the decree and the decretal debt forms part of the plaintiff's estate and the appeal from the decree by the defendant becomes a question of benefit or detriment to the estate of the plaintiff which his legal representatives are entitled to uphold and defend (vide Gopal v. Ramchandra [ILR 26 Bom 597] and Melepurath Sankunni v. Thekittil [(1986) 1 SCC 118 : AIR 1986 SC 411]).

(emphasis supplied)

79. It is also necessary to reproduce paragraph 11 of the afore-said judgment which reads as under:

11. Though Section 306 speaks only for executors and administrators and Order 22 of Rule 3 Civil Procedure Code sets out the rights of legal representatives to continue the proceedings instituted earlier by a deceased plaintiff if the right to sue survives, the courts have taken the view that the legal representatives stand on par with executors and administrators regarding their right to seek impleadment in order to continue the suit. We may in this connection only quote the following passage occurring in Melepurath Sankunni case [(1986) 1 SCC 118 : AIR 1986 SC 411] : (SCC p. 121, para 8)

“Section 306 further speaks only of executors and administrators but on principle the same position must

necessarily prevail in the case of other legal representatives, for such legal representatives cannot in law be in better or worse position than executors and administrators and what applies to executors and administrators will apply to other legal representatives also.”

80. In paragraph 11, reference has been made by the Supreme Court to its own judgment in the case of ***Melepurath Sankunni v. Thekittil Gopalankutty Nair, AIR 1986 SC 411***, wherein the Supreme Court by giving reference to Section 306 of the Indian Succession Act, 1925, has stated, though the said section specifically speak of rights of executors and administrators to continue the proceedings instituted by the deceased plaintiff but on principle, the same position must necessarily prevail in the case of Legal Representatives, for such Legal Representatives cannot in law be in better or worse position than that of executors and administrators and as such what applies to executors and administrators will apply to other Legal Representatives also.

81. It is also not the case of Mr. Sethi that if the prayers in the plaint are to be granted, the same would not enure to the benefit of defendant Nos. 1, 2C and 3. Mr. Sethi has not relied upon any judgment(s) in support of his contention that right to sue would not survive in favour of the defendant Nos.1, 2C and 3 and as such the suit shall abate. Therefore, the application being I.A. 12310/2022, is allowed, the defendant Nos.1, 2C and 3, are substituted as the Legal Representatives of late Satula Devi and it is accordingly disposed of. They shall file the amended memo of parties within two weeks.

82. Now, I shall deal with the application filed by the deceased Satula Devi, on May 5, 2022, under Order VI Rule 17 read with section 151 of the CPC, 1908, being I.A. 8087/2022, seeking amendment of the plaint. Suffice to state, as I have already substituted defendant Nos.1, 2C and 3 as Legal Representatives of late Satula Devi, this application is being considered as filed by the Legal Representatives of late Satula Devi for the amendment of the plaint. Vide this application, the amendments have been sought for bringing on record: (1) Uma Devi as defendant No.4; (2) facts to challenge the Will dated July, 18, 2011. The amendments have also been specifically sought vide paragraphs 4, 5, 6, 7, 8, 9 and 10, of this application.

83. Mr. Nayar, appearing for the defendant Nos.2A and 2B, has contested the application primarily on the ground that when the suit itself is not maintainable then the application being I.A. 8087/2022 under Order VI Rule 17, read with section 151 of the CPC, 1908, shall also not be maintainable. In support of this submission, he has placed reliance on the judgments in the cases of *Archie Comic I* and *Archie Comic II*, of the learned Single Judge in the suit and of the Division Bench in appeal, respectively, wherein it is held when the court does not have territorial jurisdiction on the basis of the averments made in the plaint, as originally filed, then such a defect cannot be cured by way of an amendment and thus, the application, as such, cannot be entertained. I am afraid that the said proposition of law cannot be made applicable to this application for the reason that I have already allowed the application seeking substitution and also there is no objection that this Court does not have territorial jurisdiction to entertain the suit.

The judgments relied upon by Mr. Nayar, hold, that on the aspect of territorial jurisdiction, it is only the plaint as filed at the first instance need to be considered and not the averments sought to be added through application for amendment. I agree with the submission of Mr. Vikas Singh that the judgments relied upon by Mr. Nayar deals with the proposition of law that if the plaint does not disclose jurisdictional facts, it cannot be amended, which is not the case here. Moreover, any objection qua maintainability of the suit (other than territorial jurisdiction) as urged by Mr. Nayar and also by Mr. Sethi shall be considered and dealt with in the subsequent paragraphs of this judgment.

84. That apart, as summons have not been issued in the suit, no prejudice would be caused to the other defendants, if the amendments as sought are allowed, subject to surely, this Court considering separately the pleas with regard to maintainability of the prayers made in the amended plaint. Accordingly, the application seeking amendment to the plaint / the suit itself is allowed. The amended plaint is thus taken on record. The judgment in the case of **Rajkumar Gurawara (Dead) Thr. Lrs (supra)**, is not required to be dealt with in view of my conclusion. The application being I.A. 8087/2022 is disposed of.

85. Now coming to the prayers as made in the amended plaint, they are the following:

“a) Pass a Decree for Declaration in favour of the Plaintiff and against the Defendant declaring the Plaintiff as owner of the suit properties as stated in the Schedule Attached with the instant suit.

b) Pass a Decree declaring the Will dated 18.07.2011 as null and void as the Plaintiffs husband could not have bequeathed the scheduled properties as the Plaintiff was the rightful owner of the same, in light of the fact that the entire estate of Dr. Prasad as it stands today was created by using the corpus of the Stridhan of the Plaintiff.

B-A: In the alternative, Declare the Will dated 18.07.2011 as null and void on the basis of the various inconsistencies and the objections of the Plaintiff and Partition the suit property as per law i.e. 1/4th share of the scheduled property.

c) Any other relief which this Hon'ble Court deems appropriate and suitable in the interest of justice and in the facts and circumstances of the case be also granted to the Plaintiff."

(emphasis supplied)

86. Broadly, objections of Mr. Sethi and Mr. Nayar against the maintainability of the instant suit are the following:

- (i) The present suit must be rejected at the outset by this Court by exercising its *suo moto* powers under Order VII Rule 11 CPC, 1908.
- (ii) The present suit is *ex facie* barred by limitation.
- (iii) The plaint does not disclose any factual or legal cause of action for the reliefs claimed.
- (iv) The present suit seeking only declaratory relief without any consequential reliefs is barred by Section 34 of the Specific Relief Act, 1963.
- (v) The declaration qua the validity of Will cannot be sought in a Civil Suit as the probate Court has the exclusive jurisdiction.
- (vi) The alternate prayer seeking partition (as set out in the amended plaint) being conditional upon a declaration of validity of the Will dated July 18, 2011, is not maintainable.

(vii) The prayer of partition is premature in view of a pending probate petition being Test Case No.1/2022.

(viii) The plaint is also barred by the provisions of the Companies Act, 2013.

(ix) The suit is also liable to be dismissed because of non-payment of *ad valorem* Court fee.

(x) Also, the application seeking selective transposition of defendant Nos.1, 2C and 3 as plaintiffs, is not maintainable in law.

(xi) Once the suit is held to be barred by limitation qua the declaratory relief, the consequential relief of permanent injunction is also barred by limitation.

87. At the first instance, I intend to deal with the submissions made by Mr. Sethi and Mr. Nayar, on the maintainability of prayers in the suit. Suffice to state, I have already reproduced the prayers as made in the suit (pursuant to the amendment having been allowed). Of the three prayers, I shall first consider prayers 'b' or 'BA'. The submissions of Mr. Sethi and Mr. Nayar, against these prayers are at (i), (iv), (v), (vi), (vii) and (viii) of the objections noted above.

88. Insofar as the plea of Mr. Sethi and Mr. Nayar that the plaint need to be rejected by this Court *suo moto* by exercising its powers under Order VII Rule 11 of CPC, 1908, on the grounds stipulated under the said Order, is concerned, there cannot be any dispute to the said proposition in view of the settled position of law as relied upon by Mr. Sethi and Mr. Nayar in the cases of: ***Patil Automation Private Limited & Others (supra)***, ***Madiraju Venkata Ramana Raju (supra)***, ***Christian Louboutin Sas (supra)***, ***Renu Khullar (supra)***, ***Godfrey***

Phillips India Limited (supra), Govind Narayan (supra) Sopan Sukhdeo Sable and Others (supra), Saleem Bhai and Others (supra), Azhar Hussain (supra) and T. Arivandandam (supra).

89. I, instead of reproducing the conclusion drawn by the Courts in all the above judgments, shall reproduce paragraph 24 of the judgment in the case of *Madiraju Venkata Ramana Raju (supra)*, wherein the law has been settled in the following manner:

“24. Ordinarily, an application for rejection of election petition in limine, purportedly under Order 7 Rule 11 for non-disclosure of cause of action, ought to proceed at the threshold. For, it has to be considered only on the basis of institutional defects in the election petition in reference to the grounds specified in clauses (a) to (f) of Rule 11. Indeed, non-disclosure of cause of action is covered by clause (a) therein. Concededly, Order 7 CPC generally deals with the institution of a plaint. It delineates the requirements regarding the particulars to be contained in the plaint, relief to be specifically stated, for relief to be founded on separate grounds, procedure on admitting plaint, and includes return of plaint. The rejection of plaint follows the procedure on admitting plaint or even before admitting the same, if the court on presentation of the plaint is of the view that the same does not fulfil the statutory and institutional requirements referred to in clauses (a) to (f) of Rule 11. The power bestowed in the court in terms of Rule 11 may also be exercised by the court on a formal application moved by the defendant after being served with the summons to appear before the Court. Be that as it may, the application under Order 7 Rule 11 deserves consideration at the threshold.”

(emphasis supplied)

90. More so, the Supreme Court in the case of *Abdul Gafur v. State of Uttarakhand, (2008) 10 SCC 97* and the Division Bench of

this Court in *P.P.A. Impex Pvt. Ltd. v. Mangal Sain Mittal*, 166 (2010) DLT 87, have held that if on a meaningful, not formal reading, the pleading is found to be manifestly vexatious and meritless, not disclosing a right to sue or defend and implausible, the Court should exercise its power and should not allow it to create an illusion and it should not permit it to go to trial.

91. Having said that, the plea of Mr. Sethi and Mr. Nayar qua prayer 'b' is that the said prayer, being in the nature of a declaration without seeking any consequential relief, the same shall not be maintainable in view of Section 34 of the Specific Relief Act, 1963.

92. I agree with their submission in view of the judgments in the cases of *Venkataraja and Ors. (supra)*, *Union of India v. Ibrahim Uddin & Anr. (supra)*, *Vinay Krishna (supra)* and *Sneh Lata (supra)*, on which reliance has been placed by them. In *Venktraja and Ors. (supra)*, the Supreme Court, with regard to the above proposition has held that mere declaratory suit without seeking any consequential relief shall be hit by Section 34 of the Specific Relief Act, 1963. The relevant part of the conclusion is as under:

“23. The very purpose of the proviso to Section 34 of the 1963 Act, is to avoid the multiplicity of the proceedings, and also the loss of revenue of court fees. When the Specific Relief Act, 1877 was in force, the 9th Report of the Law Commission of India, 1958, had suggested certain amendments in the proviso, according to which the plaintiff could seek declaratory relief without seeking any consequential relief, if he sought permission of the court to make his subsequent claim in another suit/proceedings. However, such an amendment was not accepted. There is no provision analogous to such suggestion in the 1963 Act.

24. A mere declaratory decree remains non-executable in most cases generally. However, there is no prohibition upon a party from seeking an amendment in the plaint to include the unsought relief, provided that it is saved by limitation. However, it is obligatory on the part of the defendants to raise the issue at the earliest. (Vide Parkash Chand Khurana v. Harnam Singh [(1973) 2 SCC 484 : AIR 1973 SC 2065] and State of M.P. v. Mangilal Sharma [(1998) 2 SCC 510 : 1998 SCC (L&S) 599] .)

25. In Muni Lal v. Oriental Fire & General Insurance Co. Ltd. [(1996) 1 SCC 90] this Court dealt with declaratory decree, and observed that : (SCC p. 93, para 4)

“4. ... 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 the grant of declaratory relief.”

26. In Shakuntla Devi v. Kamla [(2005) 5 SCC 390] , this Court while dealing with the issue held : (SCC p. 399, para 21)

“21. ... a declaratory decree simpliciter does not attain finality if it has to be used for obtaining any future decree like possession. In such cases, if suit for possession based on an earlier declaratory decree is filed, it is open to the defendant to establish that the declaratory decree on which the suit is based is not a lawful decree.”

27. **In view of the above, it is evident that the suit filed by the appellant-plaintiffs was not maintainable, as they did not claim consequential relief. Respondents 3 and 10 being admittedly in possession of the suit property, the appellant-plaintiffs had to necessarily claim the consequential relief of possession of the property. Such a plea was taken by the respondent-defendants while filing the written statement. The appellant-plaintiffs did not make any attempt to amend the plaint at this stage, or even at a later stage.** The declaration sought by the appellant-plaintiffs was not in the nature of a relief. A worshipper may seek that a decree between the two parties is not binding on the deity, as mere declaration can

protect the interest of the deity. The relief sought herein, was for the benefit of the appellant-plaintiffs themselves.”
(emphasis supplied)

So, it must be held that prayer ‘b’ of the plaint being in the nature of declaration, the same shall not be maintainable.

93. A related argument of Mr. Sethi and Mr. Nayar is that the common prayer in ‘b’ or ‘BA’ of declaring the Will, dated July 18, 2011, as null and void, cannot be decided / granted by this Court as the validity of Will, dated July 18, 2011, shall be the subject matter of probate proceeding initiated by defendant No.2, which is pending consideration in this Court.

94. They have relied upon the judgment in the case of **Chiranjilal Shrilal Goenka (deceased through LRs) (supra)**, wherein the Supreme Court in paragraph 20 has stated as under:

“20. On a conspectus of the above legal scenario we conclude that the probate court has been conferred with exclusive jurisdiction to grant probate of the will of the deceased annexed to the petition (suit); on grant or refusal thereof, it has to preserve the original will produced before it. The grant of probate is final subject to appeal, if any, or revocation if made in terms of the provisions of the Succession Act. It is a judgment in rem and conclusive and binds not only the parties but also the entire world. The award deprives the parties of statutory right of appeal provided under Section 299. Thus the necessary conclusion is that the probate court alone has exclusive jurisdiction and the civil court on original side or the arbitrator does not get jurisdiction, even if consented to by the parties, to adjudicate upon the proof or validity of the will propounded by the executrix, the applicant. It is already seen that the executrix was nominated expressly in the will and is a legal representative entitled to represent the estate of the deceased

but the heirs cannot get any probate before the probate court. They are entitled only to resist the claim of the executrix of the execution and genuineness of the will. The grant of probate gives the executrix the right to represent the estate of the deceased, the subject-matter in other proceedings. We make it clear that our exposition of law is only for the purpose of finding the jurisdiction of the arbitrator and not an expression of opinion on merits in the probate suit.”

(emphasis supplied)

95. This submission of Mr. Sethi and Mr. Nayar is answered by Mr. Vikas Singh by relying on paragraph 15 of the judgment in the case of ***Chiranjilal Shrilal Goenka (deceased, through LRs.) (supra)*** by stating that Probate Court cannot decide the question of title qua the property mentioned in the Will dated July 18, 2011 and it is only the Civil Court which can decide the same. There cannot be any dispute on the afore-said proposition of law but at the same time, the declaration sought that the Will dated July 18, 2011, be declared as null and void, cannot be decided without there being a decision on the validity of that Will propounded by the defendant No.2. It is only thereafter that the decision on the validity of the Will by the Probate Court can be admitted into evidence and can be taken into consideration by the Civil Court while deciding the suit for title as the grant of probate may not be decisive for declaration of title. [Ref: ***Kanwarjit Singh Dhillon (supra)***]. Still the issue of validity of Will has to be decided by the Probate Court and it is precisely the prayer at ‘b’ of the plaint. So, additionally, the prayer ‘b’ of the suit shall not be maintainable before this Court exercising the original civil jurisdiction.

96. I may also refer to the judgment of the Madhya Pradesh High Court in the case of *Rama Shankar v. Balak Das*, AIR 1992 MP 224, wherein it is held that in a Civil Court no issue can be struck to decide if the Will is the last valid Will of the deceased or not.

97. The question now would be, whether prayer 'BA', wherein the plaintiff has sought a declaration with a consequential relief i.e., for declaring the Will dated July 18, 2011 as null and void on the basis of the various inconsistencies and objections of the plaintiff and partition of the suit properties, as per law, would be maintainable. The submission of Mr. Sethi and Mr. Nayar is primarily that when the declaratory prayer for declaring the Will dated July 18, 2011, as null and void, is not maintainable, as such an issue shall be the subject matter of the Probate Court, a consequential prayer, emanating from such a declaration, shall also not be maintainable, is appealing.

98. This I say so because consequential relief is a relief which would follow directly from the declaration sought, that is to declare the Will dated July 18, 2011 as null and void. If such a prayer is not maintainable surely the prayer for consequential relief shall also not be maintainable. In fact, I note, the prayer 'BA' is made for declaring the Will dated July 18, 2011, as null and void on the basis of various inconsistencies and objections of the plaintiff, which has the effect of contesting the validity of the Will dated July 18, 2011, which shall be decided by the Probate Court.

99. In this regard, it is necessary to refer to the judgment in the case of *Mussamad Jubelnessi v. Deen Muhamad*, AIR 1941 Lah 97(FB), wherein the Court has held as under:

“The meaning of the expression Consequential relief as used in section 7(iv)(c) of the Court Fees Act was recently considered by a Full Bench of the Allahabad High Court (consisting of five Judges) in Kalu Ram v. Babu Lal [I.L.R. (1932) 54 All. 812 (F.B.)], and it was held that the expression “consequential relief” means some relief, which would follow directly from the declaration given, the valuation of which is not capable of being definitely ascertained and which is not specifically provided for anywhere in the Act and cannot be claimed independently of the declaration as a “substantial relief.” It follows, therefore, that if the relief claimed in any case is found in reality to be tantamount to a substantial relief and not a mere “consequential relief” in the above sense the plaintiff must pay Court-fee on the substantial relief.”

(emphasis supplied)

100. Similarly, the Supreme Court in its recent opinion in the case of *Padhiyar Prahladi Chenaji (deceased) through LRs. (supra)* has in paragraph 36, though in the context of the suit being barred by limitation, has held in such eventuality, the consequential relief can also be said to be barred by limitation. Paragraph 36 of the judgment is reproduced as under:

“36. Therefore, once the suit is held to be barred by limitation qua the declaratory relief and when the relief for permanent injunction was a consequential relief, the prayer for permanent injunction, which was a consequential relief can also be said to be barred by limitation. It is true that under normal circumstances, the relief of permanent injunction sought is a substantive relief and the period of limitation would commence from the date on which the possession is sought to be disturbed so long as the interference in possession continuous. However, in the case of a consequential relief, when the substantive relief of declaration is held to be barred by limitation, the said principle shall not be applicable.”

(emphasis supplied)

101. In this regard, I may also refer to the judgment of the Supreme Court in the case of *State of Punjab and Anr. v. Balkaran Singh*, (2006) 12 SCC 709, wherein in paragraph 17, it is held as under:

“17. Once the prayer for declaration sought for in the suits is found to be barred by limitation, it has to be noticed that the prayer that follows is only consequential on the relief of declaration. That prayer is to the effect that the plaintiff is entitled to the pay scale of Rs 1200-1850 as against the scale of pay of Rs 940-1850 with effect from 1-1-1978 and entitled for payment of all other service benefits including yearly increments, arrears and interest thereon at the rate of 18 per cent per annum up to the date of payment with effect from 1-1-1978. It must be noticed that there is no independent prayer for recovery of arrears of pay and the prayer is couched in such a manner that it can be understood only as consequential on the grant of the first relief. In other words, it is not an independent relief that could be granted even if the main prayer is declined. In that view, it has to be held that a consequential relief could not be granted in view of the fact that the main relief of declaration sought for has been held to be barred by limitation.”

(emphasis supplied)

102. Hence, it must be held that prayers ‘b’ and ‘BA’, though sought alternatively, in view of my conclusion above, shall not be maintainable. It is made clear that this conclusion of mine shall not mean that a suit for partition, otherwise, is not maintainable.

103. The judgment in *Praveer Chandra (supra)*, *Ravi Khanna (supra)* and *Nirmala Devi (supra)*, as relied upon by Mr. Vikas Singh, to contend that the scope of partition suit is broader than that of the probate proceedings and both the proceedings can continue simultaneously are concerned, in the said cases the Courts were

concerned with the suit for partition and the probate proceedings and it was in those facts that the Courts have held that ideally a partition suit should be heard along with the probate petition. Even in the case of ***Shamita Singh & Anr. (supra)***, on which reliance has been placed by Mr. Vikas Singh, the Supreme Court was concerned with the partition suit pending before the High Court of Delhi as against the probate proceedings which was pending before the High Court of Bombay and it was in those facts and circumstances that the Supreme Court, had transferred the partition suit pending before the High Court of Delhi to the High Court of Bombay, where the probate proceedings were pending. Suffice to state, the judgments have no applicability to the facts of this case and in view of my conclusion above.

104. Insofar as prayer 'a' of the plaint is concerned, similar submission has been made by Mr. Sethi and Mr. Nayar, that the prayer being only for declaration without consequential relief, the said prayer shall also not be maintainable.

105. This submission was contested by Mr. Vikas Singh, by submitting that the suit properties as stipulated in the schedule appended to the plaint, are in the possession of the sole guardian and as such being '*custodia legis*', in terms of the order passed by learned Single Judge in W.P.(C) 1271/2020, no prayer with regard for possession is required to be sought. This submission of Mr. Vikas Singh is appealing in view of the judgment of the Supreme Court in the case of ***Deokuer & Anr. v. Sheoprasad Singh & Ors., AIR 1966 SC 359***, wherein the Court was concerned with a dispute between the appellants and the respondents in respect of a property which was

attached by the Magistrate exercising its powers under Section 145 of the Criminal Procedure Code, 1898 ('Old Code'). The appellants filed a suit for declaration qua title to the disputed property but had not made a prayer for consequential relief of possession. The suit was decreed by the Trial Court but the High Court set aside the decree on the ground that the suit is bad under Section 42 of the Specific Relief Act, 1877 ('Old Act') for failure to seek a consequential relief of possession. The Supreme Court in appeal has in paragraph 5 held as under:-

“5. The authorities clearly show that where the defendant is not in possession and not in a position to deliver possession to the plaintiff it is not necessary for the plaintiff in a suit for a declaration of title to property to claim possession : see Sunder Singh — Mallah Singh Sanatan Dharam High School, Trust v. Managing Committee, Sunder Singh-Mallah Singh Rajput High School [(1957) LR 65 IA 106] . Now it is obvious that in the present case, the respondents were not in possession after the attachment and were not in a position to deliver possession to the appellants. The Magistrate was in possession, for whomsoever, it does not matter, and he was not of course a party to the suit. It is pertinent to observe that in Nawab Humayun Begam v. Nawab Shah Mohammad Khan [AIR (1943) PC 94] it has been held that the further relief contemplated by the proviso to Section 42 of the Specific Relief Act is relief against the defendant only. We may add that in K. Sundaresa Iyer v. Sarvajana Sowkiabil Virdhi Nidhi Ltd. [(1939) ILR Mad 986] it was held that it was not necessary to ask for possession when property was in custodia legis. There is no doubt that property under attachment under Section 145 of the Code is in custodia legis. These cases clearly establish that it was not necessary for the appellants to have asked for possession.”

(emphasis supplied)

106. The aforesaid law of the Supreme Court has been followed by a Coordinate Bench of this Court in the case of ***Ranbir Singh v. Dalbir Singh & Ors.***, MANU/DE/2516/2008, wherein this Court by referring to the judgment in the case of ***Deokuer & Anr.*** (*supra*) has in paragraph 5 held as under:-

“5. Neither the plaintiff nor the defendant no.1 as on the date of the filing of the present suit was in possession of the suit property. SHO, Mehrauli as a Court Receiver was in possession of the suit property. He came into possession of the suit property pursuant to orders passed under Section 145/146(1) of the Code of Criminal Procedure, 1973. This Order was set aside by the High Court and the Supreme Court but pursuant to directions passed by the Supreme Court, SHO, Mehrauli continued to remain in possession till this Suit was filed. The Supreme Court in Deo Kuren and another versus Sheoprashan Singh and others reported in (1965) 3 SCR 655, has opined that when a property is under an order of attachment passed under Section 145, Cr.P.C., it is not necessary to ask for relief of delivery of possession in the civil proceedings. The aforesaid judgment was followed by this Court in Autoville Finance Pvt. Ltd. versus Swastic Finance Corporation Limited and another reported in AIR 1971 Del. 310, wherein it was held that where a property is in custodia legis of a third person pursuant to orders passed by a court, the plaintiff need not specifically ask for decree of possession. Possession will be delivered by the holder, a third person, as per the direction given by the Court where the civil suit is pending. The Court specifically noticed distinction between “possession” and “custody” and observed that a receiver holds a property without claiming any legal interest for the benefit of the successful party. Custodia legis is under an obligation to restore and handover possession of the property in terms of directions given by the Civil Court and therefore relief of possession need not be separately asked for under Section 34 of the Specific Relief Act, 1963. In view of above, Issue no.1 is decided in favour of the plaintiff and

against the defendant no.1. It is held that the plaintiff is not required to make a specific prayer for possession.

(Emphasis supplied)

107. There is no dispute to the fact that a Coordinate Bench of this Court in W.P.(C) 1271/2020 filed by late Satula Devi, vide its order dated January 06, 2022, has in paragraph 22 held as under:-

“22. Considering the fact that this Court had appointed the Guardianship Committee and Supervising Guardian vide its previous order dated 29th October, 2021, in order to safeguard the movable and immovable assets of Mr. DMP, considering his demise and the continuous disputes between the family members brought to the notice of this Court today, it is clear that the Guardianship Committee cannot effectively function. Moreover, since Mr. DMP has passed away, the members of the Guardianship Committee may possibly also have claims in the estate of Mr. DMP and would be conflicted in taking decisions. There is also a need to safeguard and secure the assets so that the same, which run into thousands of crores, are not frittered away or misused in any manner. In view of the same, the following directions are issued:

(i) In view of the fact that Mr. DMP is no more, the Guardianship Committee shall stand disbanded and Justice Rajiv Sahai Endlaw (Retd.), shall act as the Sole Guardian for the estate and all assets of Mr. DMP henceforth. He shall exercise the same powers mutatis mutandis, as those of the Supervising Guardian and the Guardianship Committee, in terms of order dated 29th October, 2021. Mr. T.R. Narayanan and Mr. Shrinath Banerjee, Personal Assistants of Mr. DMP, and all parties, shall now proceed strictly in accordance with the instructions given by the Sole Guardian in respect of the assets of Mr. DMP.

(ii) A report shall be placed before this Court, by Justice Endlaw (Retd.), within a period of two weeks, in respect of the following aspects:

- (a) *Whether the various directions concerning Mr. DMP and his assets, passed by this Court have been complied with or not in terms of the Court's earlier orders and the directions given by him?*
- (b) *The minutes of proceedings containing the directions issued by him from time to time shall be placed on record along with the report.*
- (c) *Current status of the movable and immovable assets of Mr. DMP, including his bank accounts, fixed deposits, shares and any other investments.*
- (d) *Any further documents/actions which may be required in order to safeguard the moveable and immovable assets of Mr. DMP.*
- (iii) *Since the probate of the alleged Will of Mr. DMP has now been filed and there is a need to secure all the moveable and immovable assets of Mr. DMP, the status quo order passed previously shall continue. No withdrawals/transfers shall be made from any of the bank accounts of Mr. DMP, including the fixed deposit accounts and other investments/holdings of Mr. DMP, held solely by him or in a joint account with any other person. However, the inward remittance into these accounts shall continue as before, including the interest accrued on the various deposits, income from investments or any other sources, dividends received from various companies, etc. Upon such remittances being made or received into these accounts, the concerned parties/banks shall give an intimation to the Sole Guardian about the same.*
- (iv) *The status quo order which was earlier granted in respect of the immovable properties of Mr. DMP, on 4th June, 2021, shall continue. No party shall take any action to create any third party interest in the said properties/assets or diminish the same in any manner. The said order was passed in the following terms:*

xxxx

xxxx

xxxx

The above direction to maintain status quo shall now be binding upon all the parties, including Mr. US and his

family who has been heard as an Intervenor, in this petition. They shall also not permit any third party to deal with the estate of Mr. DMP in any manner whatsoever, without prior permission of the Sole Guardian.

(v) Any payments which are to be made to any authorities including the tax authorities, other governmental bodies, or other expenditure including the residence expenditure, or the expenditure of Mrs. SD's residence, or approved expenditure by Justice Endlaw (Retd.), including for conduct of all final rites as per customs and traditions, shall be made only after the prior approval of the Sole Guardian.

(vi) All banks, financial institutions, companies and other authorities shall ensure strict compliance of today's directions. No amounts/assets shall be released to/transferred by any of the parties or any third party, without the prior approval of the Sole Guardian. Similarly, no account of Mr. DMP shall be permitted to be operated by any persons, without the prior approval of the Sole Guardian, which is to be obtained in respect of each such transaction.

(vii) The Sole guardian may issue directions to any person to ensure compliance of these directions.

xxx

xxx

xxx”

(emphasis supplied)

108. From the aforesaid, it is clear that the suit properties, for which prayer ‘a’ has been made, are *custodia legis* and in view of the law laid down by the Supreme Court in ***Deokuer & Anr. (supra)***, there is no requirement in law to seek a consequential prayer upon the declaration sought with regard to the title of the suit properties. This submission of Mr. Sethi and Mr. Nayar is rejected.

LIMITATION AND CAUSE OF ACTION

109. Having said that, the question now would be, whether the prayer ‘a’ of the plaint shall be barred by limitation and lack of cause

of action. The submission of Mr. Sethi and Mr. Nayar in this regard is, in view of the case of late Satula Devi that she had handed over 4.5 Kgs of gold, which she had brought as *stridhan*, at the time of her marriage, to late Dr. Mahendra Prasad in the year 1971, and late Dr. Mahendra Prasad used the money out of *stridhan* to start trading in pharmaceutical companies and out of the earning therefrom, set up the flagship companies viz. M/s Aristo Pharmaceuticals Pvt. Ltd., M/s Aristo Laboratories Pvt. Ltd. and Mapra Laboratories Pvt. Ltd., and as such, any cause of action seeking declaration thereof, if at all had arisen then, there is a delay of more than 50 years and as per Article 58 of the Limitation Act, 1963, to obtain any declaration, the time period to file a suit is three years from the date when the right to sue first accrues.

110. The above submission of Mr. Sethi and Mr. Nayar has been opposed by Mr. Vikas Singh by stating that the cause of action arose only on the happening of the following eventualities: (i) death of Dr. Mahendra Prasad on December 27, 2021; (ii) when the probate case qua the Will, was filed by the defendant No.2 on January 03, 2022; and (iii) January 2022, when the defendant No.2 has produced the Will for the first time, when Satula Devi discovered, her exclusion.

111. In support of his submission, Mr. Vikas Singh has also relied upon the judgment of the Supreme Court in the case of ***Pratibha Rani v. Suraj Kumar, (1985) 2 SCC 370***, wherein it is held that the *stridhan* is the exclusive property of a Hindu married woman and the husband exercises no right or interest over the same. He also relied on the judgment in the case of ***Indubala Debi v. Manmatha Roy and Ors.***,

1924 SCC OnLine Cal 413, to contend that the Calcutta High Court, has held that the properties purchased by the *stridhan* shall be of the wife only.

112. But still the issue need to be considered and decided in the light of Article 58 of the Limitation Act, 1963, and also by considering the averments made in the plaint and the documents filed along with the same. Article 58 of the Limitation Act, 1963 stipulates the following:

Article	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.

Whereas the averments in the plaint are the following:

“(i) The Plaintiff is the lawfully wedded wife of the Testator, Dr.Mahendra Prasad, having married him in the year 1960. That late Dr. Prasad, i.e., the Husband of the Plaintiff, was from a poor family but always had a keen eye to do business and the requisite acumen for being a successful businessman. The Plaintiff being from an extremely rich family, at the time of marriage, brought large amounts of gold (Approximately 4.5Kgs) in the form of Stridhan. That the Plaintiff and Dr.Mahendra Prasad had three children from their wedlock namely Mr.Rajeev Sharma (Defendant No. 1) born in the year 1963, Mr. Ranjit Sharma (Defendant No. 3) born in the year 1967 and Late Mr. Devendra Rai born in the year 1965.

(ii) That from 1960 i.e., the year of the marriage between the Plaintiff and Dr. Prasad till the year 1971, the Plaintiffs husband did not have a fixed employment and used to eke out a living farming small parcels of land which he jointly owned with his uncles, even though the Plaintiffs husband

had an offer to become a schoolteacher which he did not accept as he aspired to do business and not start a career as a teacher. That it was finally in the year 1971, that the Plaintiff herein out of love and affection, seeing the frustration of her husband handed over the gold given to her by her father in the marriage to Dr. Mahendra Prasad. He initially used the money for trading in pharmaceutical commodities and from the earnings therefrom set up the flagship company M/S Aristo Pharmaceuticals Pvt. Ltd. It is relevant to note that the Plaintiffs husband, Dr. Prasad, had no other source of capital other than the gold/stridhan provided by the Plaintiff herein for starting his business empire. That the Plaintiff verily believes that it was for this reason, in the initial years of the formation of the company, Dr. Prasad had maintained the shareholding of the Plaintiff and her sons as approximately 70% of the company. It is pertinent to note herein that the Plaintiff, however, due to her love and devotion to her husband, whom she viewed as a God, never interfered or enquired about his business. That it was because of this unwavering devotion to her husband, that the Plaintiff did not raise any issues when her husband brought home another woman (Smt. Uma Devi). That the Plaintiff owing to her devotion to her husband was confident that till the time her husband's mental faculties were intact she would not have to worry about his Estate and her interest shall be secured. That the Plaintiff's husband mental faculties gradually eroded over time and taking advantage of the same, the Defendant No.2 and Smt. Uma Devi started to take control over the Estate of the Plaintiff's husband. It is relevant to point out that the Plaintiffs husband herein did not have any other source of income/corpus apart from the Stridhan of the Plaintiff to start his business. Therefore, the entire business empire that was created was only possible from the Stridhan of the Plaintiff. As such, the Plaintiffs husband could not have bequeathed the same by way of a will.

(iii) That the Plaintiffs son, Late Mr. Devendra Rai married one Smt. Meeta Mohini, on 10.02.1989.

(iv) That on 02.02.1990, from the wedlock of Late Mr. Devender Rai and Smt. Meeta Mohini, one child was born i.e., Smt. Mahadevi Bhagwati who has been arrayed as the Defendant No. 2C in the instant suit.

(v) That the marriage between Late Mr. Devender Rai and Smt. Meeta Mohini ended through a decree of divorce dated 29.08.1995.

(vi) Medical Reports of Dr.Mahendra Prasad of 1997 indicate that he was having transient memory loss since late 1990's. The reports also states that there were mild changes in the frontal lobe indicating that the onset of the mental illness of Dr.Mahendra Prasad started since then. These medical reports are indicative of the fact that mild symptoms of Dr.Mahendra Prasad's cognitive impairment had definitely started surfacing way back in 1990s and the same was first time recorded in an authoritative medical opinion in the year 1997.

(vii) In the year 2011, Mrs. Kanchana Rai (Defendant No. 2) was the key reason behind the sudden demise of Plaintiff's Son, Devendra Rai. It is pertinent to note that on the day of death of Devendra Rai, Mrs. Kanchana Rai was in Mumbai and it is the belief of the Plaintiff that she was the cause for his death.

(viii) Sometime in the year 2017, when the mental condition of Dr. Prasad started deteriorating rapidly, one Ms. Uma Devi (Concubine of Dr. Prasad) in connivance with Mrs. Kanchana Rai and other individuals started their evil plan of alienating Dr.Mahendra Prasad from all the members of the family, including the Plaintiff. That prior to 2017, the entire family lived as one large family and photographs to that effect with the pleadings are already placed on record in various proceedings before this Hon'ble Court."

113. It is not the case of Mr. Vikas Singh that the Article 58 has no applicability in the case in hand. A perusal of Article 58 would reveal that limitation to obtain any declaration is three years from the date

when the right to sue first accrues. So, it is to be seen, when did the cause of action first arose for the late Satula Devi to assert her title over the suit properties. It is to be noted here that the suit properties includes, *inter alia*, the shares in the flagship company viz. M/s Aristo Pharmaceuticals Pvt. Ltd.; M/s Aristo Laboratories Pvt. Ltd.; M/s Mapra Laboratories Pvt. Ltd., immovable properties located in Delhi, Mumbai, Kolkata and Bihar, plethora of saving bank accounts and term deposit receipts and jewelry.

114. The averments in the plaint would show that the *stridhan* in the nature of gold was brought by late Satula Devi at the time of her marriage with late Dr. Mahendra Prasad and handed over the same to him in the year 1971. He initially used the money out of that *stridhan* for trading in pharmaceutical commodities and earnings therefrom, set up the flagship company viz. M/s Aristo Pharmaceuticals Pvt. Ltd. It is also stated that late Dr. Mahendra Prasad had maintained the shareholding of the late Satula Devi and their sons, as approximately as 70% in the afore-said company. It is also stated that due to her love and affection towards her husband (as she viewed him as a God), she did not use to interfere with her husband's business. It is also stated that in the year 1997, the medical reports of late Dr. Mahendra Prasad indicated that he was having transient memory loss, since 1990. It is also stated that in the year 2017, when the mental condition of late Dr. Mahendra Prasad started rapidly deteriorating, Uma Devi, in connivance with the defendant No.2 and other individuals, started hatching their evil plan of alienating late Dr. Mahendra Prasad from all the members of his family, including the late Satula Devi. It is also

stated that because of serious mental disability of late Dr. Mahendra Prasad, finding that there was no other way to secure his well being and proper treatment, the plaintiff preferred the W.P.(C) No. 1271 of 2020, before this Court, seeking appointment of legal guardian for late Dr. Mahendra Prasad, firstly to deal with his mental disability and treatment, and also to manage his properties, investments and other financial affairs. It is further stated that the need for securing the legal guardianship of her late husband, i.e., Dr. Mahendra Prasad arose primarily due to the fact that he used to be surrounded by individuals such as the defendant No.2, who, as per the averments, wished to take advantage of his diminishing faculties.

115. Suffice to state, averments in the plaint do not disclose the year of establishment of the flagship company viz. M/s Aristo Pharmaceuticals Pvt. Ltd. or that of M/s Aristo Laboratories Pvt. Ltd. or that of M/s Mapra Laboratories Pvt. Ltd. It is not the case that the same were established within three years before the filing of the present suit. The averments in the plaint also reveal that M/s Aristo Pharmaceuticals Pvt. Ltd. was established after she had handed over her gold to late Dr. Mahendra Prasad and surely, it happened much before the filing of the suit. The averments further show that 70% of the shareholding in the Company viz. M/s Aristo Pharmaceuticals Pvt. Ltd., was maintained between the plaintiff and her sons, i.e., defendant Nos.1 and 3. It means, the legal heirs of late Satula Devi, i.e., her sons defendant Nos.1 and 3, who have been substituted as legal heirs of late Satula Devi, were the shareholders of that company, over which, the late Satula Devi has sought a declaration, being the owner qua the

shares of the company . It is also not the case of late Satula Devi that she protested against the allotment of shares to defendant Nos.1 and 3. The plaint neither discloses as who were allotted the balance 30% shares and any objection taken with regard to such allotment. It is at the time of establishing the companies followed by allotment of shares, the cause has arisen to make a claim on the companies and shares. Further, the plaint neither discloses the date and year of purchase of immovable properties situated in Delhi, Mumbai, Kolkata and Bihar qua which a declaration has been sought. It is also not the case of the late Satula Devi that the immovable properties have been purchased within three years before the filing of the suit so as to seek declaration in respect of those properties as her own properties being within limitation in terms of Article 58 of the Limitation Act, 1963. The relevant facts are required to be disclosed as they have direct bearing to determine the date of first accrual of cause of action, more particularly in the light of the prayer made. Similar is the position in respect of the saving bank accounts and term deposits opened in the name of late Dr. Mahendra Prasad, over which ownership is being claimed. In other words, no details regarding, date and year of opening of those saving bank accounts and term deposits, by late Dr. Mahendra Prasad, have been stated. It is the case of the late Satula Devi, in the plaint, that in the year 1997, the medical opinion was suggestive of the fact that late Dr. Mahendra Prasad had started losing his memory. If that be so that was the time when it was required for late Satula Devi to secure all properties over which she is now claiming the ownership.

116. I must state here that Mr. Nayar had argued that in 2017, when mental condition of late Dr. Mahendra Prasad had started deteriorating, Uma Devi, in connivance with the defendant No.2 and other individuals, started alienating the assets of late Dr. Mahendra Prasad. This submission of Mr. Nayar, is not in conformity with the averments made in the plaint, which I have reproduced above. To the contrary, it is the case of the late Satula Devi, that Uma Devi in connivance with the defendant No.2, had started alienating late Dr. Mahendra Prasad from all the members of his family, including the late Satula Devi. In other words, it is not stated in the plaint that Uma Devi in connivance with the defendant No.2, was alienating the properties of late Dr. Mahendra Prasad. In any case, late Satula Devi, having realized that Uma Devi in connivance with defendant No.2 is alienating late Dr. Mahendra Prasad away from her was also the time when late Satula Devi should have asserted her claim on the suit properties.

117. That apart, the submission of Mr. Vikas Singh that the cause of action has accrued on December 21, 2021, when late Dr. Mahendra Prasad has expired; on January 3, 2022, when probate petition was filed and; in January 2022, when the defendant No.2 has produced the Will dated July 18, 2011, wherein late Satula Devi was excluded, is untenable and misplaced. The said dates and events cannot constitute cause of action for late Satula Devi to make a claim for the suit properties.

118. The death of Dr. Mahendra Prasad may be a cause for late Satula Devi to make a claim for succession as the Legal Representative

of late Dr. Mahendra Prasad and not otherwise. Similarly, the filing of probate petition and production of Will dated July 18, 2011, by the defendant No.2, in the month of January 2022, to the exclusion of late Satula Devi, cannot be a cause to make a claim for suit properties. It can at the most be for succession as the Legal Representative of late Dr. Mahendra Prasad.

119. The scope of Article 58 of the Limitation Act, 1963 is clear, 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. In other words, 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.

120. In the case of *Vimal Chand Jain (supra)*, a Coordinate Bench of this Court in paragraphs 25 to 30 held as under:-

“25. To examine the aspect of limitation, in the first instance, it is necessary to refer to Articles 58 and 59 of Schedule-1 of the Limitation Act, 1963 that prescribe the period of limitation for filing a suit for a decree of declaration and for a decree of cancellation of an instrument, that state as below:-

*The Schedule
Periods of Limitation
[See Sections 2(j) and 3]
First Division – Suits*

<i>PART III-Suits relating to Declarations</i>			
	DESCRIPTION OF SUIT	DESCRIPTION OF SUIT	TIME FROM WHICH PERIOD BEGINS TO RUN
58.	<i>To obtain any other</i>	<i>Three years</i>	<i>When the right to</i>

	<i>declaration</i>		<i>sue first accrues</i>
<i>PART IV-Suits relating to Decrees and Instruments</i>			
	<i>DESCRIPTION OF SUIT</i>	<i>PERIOD OF LIMITATION</i>	<i>TIME FROM WHICH PERIOD BEGINS TO RUN</i>
59.	<i>To cancel or set aside an instrument or decree or for the rescission of a contract.</i>	<i>Three years</i>	<i>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.</i>

26. It is also relevant to note that Section 9 the Limitation Act prescribes that once time has begun to run, no subsequent disability or inability to institute a suit or make an application, stops it.

27. The expression 'right to sue' has not been defined but it has fallen for interpretation on several occasions by the Supreme Court and the High Courts, including in the cases of *State of Punjab v. Gurdev Singh*, reported as (1991) 4 SCC 1, *Daya Singh v. Gurdev Singh (dead) by LRs*, reported as (2010) 2 SCC 194, *Khatri Hotels Pvt. Ltd. v. Union of India*, reported as (2011) 9 SCC 126: 2011 (10) Scale 190 and *Board of Trustees of Port of Kandla (supra)*.

28. The law on the issue of the date when the cause of action for instituting a suit arises, is quite well settled. In the case of *Khatri Hotels (supra)*, when required to examine a situation where a right to sue accrues on multiple causes of action and decide as to when will the period of limitation begin to run in such circumstances for instituting a suit, the Supreme Court had made the following pertinent observations:-

“24. The Limitation Act, 1963 (for short “the 1963 Act”) prescribes time limit for all conceivable suits, appeals, etc. Section 2(j) of that Act defines the expression “period of limitation” to mean the period of limitation prescribed in the Schedule for suit, appeal or application. Section 13 lays down that every suit instituted, appeal preferred or application made after the prescribed period shall, subject to the provisions of Section 4 to 24, be dismissed even though limitation may not have been set up as defence. If a suit is not covered by any specific article, then it would fall within the residuary article. In other words, the residuary article is applicable to every kind of suit not otherwise provided for in the schedule.

25. Article 58 of the 1963 Act, which has a bearing on the decision of this appeal, reads as under:

The Schedule

Periods of Limitation

[See Sections 2(j) and 3]

<i>Description of suit</i>	<i>Period of Time</i>	<i>Time from which limitation period begins to run</i>
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PART III - Suits Relating to Declarations

58. To obtain any other declaration.	Three years	When the right to sue first accrues.”
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26. Article 120 of the Indian Limitation Act, 1908 (for short, ‘the 1908 Act’)

which was interpreted in the judgment relied upon by Shri Rohtagi reads as under:-

<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
120. Suit for which no period of limitation is provided elsewhere in this schedule.	Six years	When the right to sue accrues.”

27. The differences which are discernible from the language of the above reproduced two articles are:

(i) The period of limitation prescribed under Article 120 of the 1908 Act was six years whereas the period of limitation prescribed under the 1963 Act is three years and,

(ii) Under Article 120 of the 1908 Act, the period of limitation commenced when the right to sue accrues. As against this, the period prescribed under Article 58 begins to run when the right to sue first accrues.

28. Article 120 of the 1908 Act was interpreted by the Judicial Committee in *Bolo v. Mt. Koklan* and it was held: (IA p. 331)

“There can be no ‘right to sue’ until there is an accrual of the right asserted in the suit and its infringement, or at least, a clear or unequivocal threat to infringe that right, by the defendant against whom the suit is instituted.”

The same view was reiterated in *Annamalai Chettiar v. A.M.K.C.T. Muthukaruppan Chettiar* and *Gobinda Narayan Singh v. Sham Lal Singh*.

29. In *Rukhmabai v. Laxminarayan*, the three-Judge Bench noticed the earlier judgments and summed up the legal position in the following words: (*Rukhmabai case*, AIR p. 349, para 33)

“33.The right to sue under Article 120 of the 1908 Act accrues when the defendant has clearly or unequivocally threatened to infringe the right asserted by the plaintiff in the suit. Every threat by a party to such a right, however ineffective or innocuous it may be, cannot be considered to be a clear and unequivocal threat so as to compel him to file a suit. Whether a particular threat gives rise to a compulsory cause of action depends upon the question whether that threat effectively invades or jeopardizes the said right.”

30. 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.”
(emphasis added)

29. In the case of Daya Singh (supra), the Supreme Court had observed as below:

“13. Let us, therefore, consider whether the suit was barred by limitation in view of Article 58 of the Act in the background of the facts stated in the plaint itself. Part III of the Schedule which has prescribed the period of limitation relates to suits concerning declarations. Article 58 of the Act clearly says that to obtain any other declaration, the limitation would be three years from the date when the right to sue first accrues.

14. In support of the contention that the suit was filed within the period of limitation, the learned Senior Counsel appearing for the Appellant-Plaintiffs before us submitted that there could be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right by the Defendant against whom the suit is instituted. In support of this contention the learned Senior Counsel strongly relied on a decision of the Privy Council in reported in [AIR 1930 PC 270] Bolo v. Koklan. In this decision Their Lordships of the Privy Council observed as follows:

....There can be no ‘right to sue’ until there is an accrual of the right asserted in the suit and its infringement, or at least a clear and unequivocal threat to infringe that right, by the Defendant against whom the suit is instituted.

15. A similar view was reiterated in C. Mohammad Yunus v. Syed Unnissa [AIR 1961 SC 808] in which this Court observed:

“7.The period of six years prescribed by Article 120 has to be computed from the date when the right to sue

accrues and there could be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right.

In C. Mohammad Yunus, this Court held that the cause of action for the purposes of Article 58 of the Act accrues only when the right asserted in the suit is infringed or there is at least a clear and unequivocal threat to infringe that right. Therefore, the mere existence of an adverse entry in the revenue records cannot give rise to cause of action.

16. ...Accordingly, we are of the view that the right to sue accrued when a clear and unequivocal threat to infringe that right by the Defendants when they refused to admit the claim of the appellants, i.e., only 7 days before filing of the suit. Therefore, we are of the view that within three years from the date of infringement as noted in para 16 of the plaint the suit was filed. Therefore, the suit which was filed for declaration on 21.8.1990, in our view cannot be held to be barred by limitation.”

30. Thus, it is clear that from the above line of decisions that when it comes to computation of the period of limitation for instituting a suit, the said period begins to run from the date when the right to sue has first arisen and there is an infringement or a clear/unequivocal threat to infringe that right, as envisaged under Article 58 of the Act.”

121. In fact, in the petition filed by late Satula Devi being W.P.(C) 1271 of 2020, she had clearly represented in paragraphs 1, 3, 12, 18, 19, 21, 22, grounds C, G and H and prayers ‘a’ and ‘b’ , that the properties are of late Dr. Mahendra Prasad and being so, a Guardian is required to be appointed. The paragraphs 1, 3, 12, 18, 19, 21, 22, grounds C, G and H and prayers ‘a’ and ‘b’ are reproduced as under:

AVERMENTS MADE IN W.P.(C) 1271/2020

“1. That the Petitioner, a citizen of India, is preferring the present writ petition as she is remediless with respect

to protection of person ad property of Shri Dr. Mahendra Prasad (husband of the petitioner and father of Respondent nos.3 & 4),

3. Because of Fronto Temporal Dementia, Dr. Mahendra Prasad is incapable of taking any cogent and intelligent decisions for himself. This has incapacitated / diminished his cognitive faculties too, rendering him unable to recognise close relatives including wife, the Petitioner and children or administer and supervise his properties and financial affairs.

12.there is every likelihood of these persons and others causing harm to the Petitioner's husband and siphon off his estate and assets apart from indulging in financial misappropriation

18. Section 13 of the Act of 2016, enables the Petitioner as spouse to be the preferred supporting person for the purpose of being the legal guardian of the person with disability not only for the purpose of ensuring the physical and emotional well being of her husband, but to ensure that his assets and finances are property safeguarded and managed.

19.there is grave apprehension regarding his physical and emotional well being and also with regard to safeguarding his properties and financial resources / assets.

21. The Petitioner's husband is completely incapacitated from taking any cogent decisions on matters relating to his family matter, properties –both movable and immovable, financial affairs, bank accounts and investments. Dr. Mahendra Prasad is completely incapable of looking after his physical well being and that of his assets. His present condition does not allow him to act independently. The Petitioner's husband has considerable wealth and is the largest shareholding in Aristo Pharmaceuticals Limited, Mapra Laboratories and Aristo Laboratories.

22. That if the Petitioner is not appointed as the guardian of Dr. Mahendra Prasad, taking advantage of

his mental health Respondent no.5 along with others would misuse their physical proximity and siphon off the entire assets (including shares) of Dr. Mahendra Prasad which is to the tune of Rs.40,10,21,37,523/- as declared by him in his affidavit 10.03.2018 before Rajya Sabha.

GROUND MADE IN W.P.(C) 1271/2020

C. BECAUSE the mental health condition of petitioner's husband was accidentally discovered by this Hon'ble Court when they met him in their chambers and he is therefore not in a proper mental condition to manage his personal assets.

G.the petitioner apprehends that they might misappropriate the assets of the husband of the petitioner. Respondent no.5 is presently staying forcibly with the Petitioner's husband at Bungalow No.4, Safdarjung Lane, New Delhi 110011.

H. Because there is an urgent necessity of appointment of Legal Guardian to secure the property and civil rights of petitioner's husband.....

PRAYERS MADE IN W.P.(C) 1271/2020

(a) Pass a writ, order or direction in the nature of Declaration appointing the Petitioner as the sole Legal guardian of Dr. Mahendra Prasad for the purpose of dealing with his medical and mental disability and with regard to all matters relating to his estate including immovable and movable properties, control and management over Bank Accounts ,financial affairs, investments such as shares, investments, bonds, public provident fund, salary, pensions etc, on such terms and conditions , if any, that this Hon'ble Court deems appropriate while exercising jurisdiction its parens patriae jurisdiction

(b) Pass a further writ, order or direction in the nature of Mandamus directing the Respondent No.1 and /or any such other authority /s as this Hon'ble Court deems appropriate person or agency to ensure that the Petitioner is facilitated in all respects to effectively

discharge her duties as the legal guardian of Dr. Mahendra Prasad and in relation to his properties and financial assets until further orders as mandated by Section 13 of the Right of Persons with Disabilities Act, 2016,”

122. Mr. Vikas Singh, on the other hand, with regard to plea of the defendants that late Satula Devi had never claimed ownership of the suit properties created out of her *Stridhan* in the writ petition would submit that the said writ petition was filed by her own son Ranjit Sharma, i.e., defendant No.3 and in any case, there was no necessity to mention about the assets of her husband and such a necessity only arose when Satula Devi got an inkling about the evil desires of Uma Devi and defendant No.2 regarding usurpation of wealth of her husband. He also relied on the order dated October 29, 2021, passed in W.P.(C) 1271/2020 to contend that late Satula Devi had given a statement before the court wherein she has stated that when she was married to late Dr. Mahendra Prasad, her father had given 4.5 Kgs of gold form which the late Dr. Mahendra Prasad started his business. Suffice to state, insofar as the aforesaid writ petition is concerned, the same has been filed by late Satula Devi, as it is clear from the supporting affidavit to the writ petition. So, in that sense, it is the late Satula Devi, who represented in the writ petition that properties are of late Dr. Mahendra Prasad. Even the statement made by late Satula Devi in W.P.(C) 1271/2020, that when she was married to late Dr. Mahendra Prasad, her father had given 4.5 Kgs of gold to late Dr. Mahendra Prasad and from which late Dr. Mahendra Prasad has

started business, shall not help the case of the plaintiff to seek a claim of the suit properties for the reasons stated above.

123. From the above, it can be seen that the case setup by late Satula Devi in this suit to claim ownership over the properties of late Dr. Mahendra Prasad is at variance with the case setup in the writ petition.

124. Mr. Vikas Singh in support of his contention on limitation has relied upon the judgment in the case of *Krishna Bhattacharjee (supra)*. The facts in the said case are, the appellant before the Supreme Court lost her case filed for getting her *stridhan* back from her husband, who was the respondent before the Supreme Court. The Magistrate rejected the claim preferred under Section 12 of the Protection of Women from Domestic Violence Act, 2005 ('Act of 2005') as not entertainable, as she had ceased to be an aggrieved person as per Section 2(a) of the Act of 2005 and also as her claim was barred by limitation. The issue which arose before the Supreme Court was whether the claim under Section 12 of the Act of 2005 was maintainable on account of limitation and whether the appellant shall be called as an "aggrieved person" despite a decree of judicial separation had been passed against her. Section 12 of the Act of 2005, reads as under:-

"12. Application to Magistrate.—(1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act:

Provided that before passing any order on such application, the Magistrate shall take into consideration any

domestic incident report received by him from the Protection Officer or the service provider.

(2) The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent:

Provided that where a decree for any amount as compensation or damages has been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.

(3) Every application under sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.

(4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the court.

(5) The Magistrate shall Endeavour to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing.”

125. The Supreme Court noted the fact that the parties before it were judicially separated and there was no decree of divorce passed against them. The Supreme Court by drawing a distinction between a decree of divorce and decree for judicial separation, held, as the legal relationship between the husband and wife continued, the finding of the Court below that appellant was not an aggrieved person is unsustainable. On the issue, whether the claim of the appellant over

her *stridhan* was barred by limitation, the Court referred to the judgment in the case of *Pratibha Rani (supra)* of which a reference has already been made above, wherein the Court has also held that insofar as *stridhan* is concerned, the wife is the absolute owner of the same and can deal with it in any manner as she likes and ordinarily, the husband has no right or interest over it. It was also held that though husband can utilize in case of distress but he is *bound to restore it or its value thereof*.

126. On the issue of continuing offence/limitation, in the context of claim under Section 12 of the Act of 2005, the Supreme Court by referring to Section 468 of Criminal Procedure Code, 1973, has in paragraphs 32 and 33 stated as under:-

*“32. Regard being had to the aforesaid statement of law, we have to see whether retention of stridhan by the husband or any other family members is a continuing offence or not. **There can be no dispute that wife can file a suit for realisation of the stridhan but it does not debar her to lodge a criminal complaint for criminal breach of trust.** We must state that was the situation before the 2005 Act came into force. In the 2005 Act, the definition of “aggrieved person” clearly postulates about the status of any woman who has been subjected to domestic violence as defined under Section 3 of the said Act. “Economic abuse” as it has been defined in Section 3(iv) of the said Act has a large canvass. Section 12, relevant portion of which has been reproduced hereinbefore, provides for procedure for obtaining orders of reliefs. It has been held in *Inderjit Singh Grewal [Inderjit Singh Grewal v. State of Punjab, (2011) 12 SCC 588 : (2012) 2 SCC (Civ) 742 : (2012) 2 SCC (Cri) 614]* that Section 468 of the Code of Criminal Procedure applies to the said case under the 2005 Act as envisaged under Sections 28 and 32 of the said Act read with Rule 15(6) of the Protection of Women from Domestic*

*Violence Rules, 2006. We need not advert to the same as we are of the considered opinion that as long as the status of the aggrieved person remains and stridhan remains in the custody of the husband, the wife can always put forth her claim under Section 12 of the 2005 Act. We are disposed to think so as the status between the parties is not severed because of the decree of dissolution of marriage. **The concept of “continuing offence” gets attracted from the date of deprivation of stridhan, for neither the husband nor any other family members can have any right over the stridhan and they remain the custodians. For the purpose of the 2005 Act, she can submit an application to the Protection Officer for one or more of the reliefs under the 2005 Act.***

33. In the present case, the wife had submitted the application on 22-5-2010 and the said authority had forwarded the same on 1-6-2010. In the application, the wife had mentioned that the husband had stopped payment of monthly maintenance from January 2010 and, therefore, she had been compelled to file the application for stridhan. Regard being had to the said concept of “continuing offence” and the demands made, we are disposed to think that the application was not barred by limitation and the courts below as well as the High Court had fallen into a grave error by dismissing the application being barred by limitation.”

(emphasis supplied)

127. A perusal of paragraph 32 would reveal that the Supreme Court had also stated that the wife can file a suit for realization of *stridhan* but it does not debar her to lodge a criminal complaint for criminal breach of trust (as the Supreme Court was concerned with). It is also stated that the said position existed before 2005 Act came into force. The Supreme Court, by referring to its judgment in the case of ***Inderjit Singh Grewal v. State of Punjab, (2011) 12 SCC 588***, was of the view that if a claim is made under the Act of 2005, Section 468 of the Criminal Procedure Code, 1973, gets applied to the said case. The

Supreme Court also held that the concept of continuing offence gets attracted from the date of deprivation of *stridhan* on which neither the husband nor any other family members can have any right.

128. In the case in hand, the declaration sought is that the late Satula Devi be declared, the owner of the suit properties, so in that sense the claim of late Satula Devi is not for recovery of *stridhan* on the ground of deprivation as was the issue in the ***Krishna Bhattacharjee (supra)***.

129. The reliance placed by Mr. Vikas Singh on the judgment of the High Court of Calcutta in the case of ***Indubala Debi (supra)*** in support of prayer 'a' by contending that properties purchased by the *stridhan* shall be of the wife's only, is concerned, the conclusion was in the context that the property concerned in that case was purchased by Girijamoni (a party concerned therein) in her name from the *stridhan* she had brought. That apart, the Supreme Court in ***Krishna Bhattacharjee (supra)*** has held that though husband can utilize *stridhan* in case of distress but he is bound to restore it or its value thereof.

130. In view of my above discussion, the prayer 'a' is not maintainable on the ground of limitation and lack of cause of action.

CONCLUSION

131. As I have concluded that the prayers made in the plaint as not maintainable / barred by limitation / lacks cause of action, without going into other pleas urged by Mr. Sethi and Mr. Nayar, the plaint and all pending applications i.e., I.A. 5656/2022 under Order XXXIX Rule 1 and 2 of the CPC, 1908, seeking injunction against the

defendant No.2 from seeking possession and control of the suit properties; I.A. 5657/2022 under Order XVIII Rule 16 of the CPC, 1908, seeking immediate examination of the witness; I.A. 8088/2022 under Section 151 of the CPC, 1908, seeking an order directing the defendants to pay compensatory costs for vexatious litigation and *ad hoc* payment in favour of late Satula Devi and I.A. 8092/2022 under Section 149 read with Section 151 of the CPC, 1908, seeking for exemption from filing the court fee, are rejected. No costs.

V. KAMESWAR RAO, J

APRIL 10, 2023/aky/ds



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