



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-1820-2024 (O&M)
Reserved on: 01.10.2024
Pronounced on: 14.10.2024

GURPREET KAUR AND ANOTHER

. . . .APPELLANTS

Vs.

KULWANT SINGH @ BEANT SINGH AND OTHERS

. . . . RESPONDENTS

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Amit Jain, Sr. Advocate, with
Mr. Anupam Mathur, Advocate, for the appellants.

Mr. Puneet Bali, Sr. Advocate, with
Mr. Vibhav Jain, Advocate, and
Mr. Gagandeep Singh, Advocate, for respondents No.1 to 18.

DEEPAK GUPTA, J.

Preliminary:

Plaintiffs (*appellants herein*) filed civil suit **on 07.03.2015** titled '*Gurpreet Kaur and another Vs. Kulwant Singh @ Beant Singh and others*' bearing CNR N: HRKU02-000577-2015 seeking decree of declaration and permanent injunction regarding the property in dispute before District court, Kurukshetra. On an application moved by the contesting defendants (*respondents herein*) under order VII Rule 11 of the CPC (*Annexure A2*), plaint (*Annexure A1*) of that suit has been rejected by the Court of *Ld. Civil Judge (Sr. Div.) Kurukshetra* vide order dated 02.08.2017. Civil Appeal bearing CNR N: HRKU01-004639-2017 filed by the plaintiffs and one of the transposed proforma defendants, has been dismissed by the *Id. Additional District Judge, Kurukshetra* vide order dated 30.05.2024

2. Present Regular Second Appeal has been filed by the plaintiffs assailing aforesaid orders passed by the Courts below. To avoid confusion, parties shall be referred as per their status and as

per their serial number given in the title of the plaint before the Trial court.

Admitted facts and relationship amongst parties to the suit:

3.1 Dispute pertains to the estate of Shri Tej Partap Singh. Relationship amongst the parties is not in dispute, inasmuch as said Tej Partap Singh had two wives namely Smt. Darshan Kaur and Smt. Sudarshan Kaur.

3.2 From the coitus of Smt. Darshan Kaur, Tej Partap Singh had four children - three sons namely, Jang Bahadur Singh (*defendant No.3*), Karambir Singh (*defendant No.4*) and Malak Singh (*defendant No.5*), and one daughter namely Ravinder Kaur (*since deceased*). Defendants No.9, 11, 12 and 13 (Nirmal Kanta, Jashan Bahadur, Aman Bahadur & Ajay Singh) are the wife & children of Jang Bahadar Singh. Defendant No.10 (Harpreet Kaur) is the daughter of Karambir Singh. Defendant No.8, 17 and 18 (Amrit Kaur, Harshveer Singh & Amarvir Singh) are the wife & children of Malak Singh. Plaintiffs Smt. Gurpreet Kaur & Charanjit Singh and proforma defendants N: 19 & 20 (Ranvijay Singh & Gajender Pal Singh) are the legal heirs of Smt. Ravinder Kaur i.e., deceased daughter of Tej Partap Singh.

3.3 From the coitus of other wife Smt. Sudarshan Kaur, Tej Partap Singh had three children - two sons namely Kulwant Singh @ Beant Singh (*defendant No.1*) & Ravi Singh @ Ravinder Singh (*defendant No.2*) and one daughter namely, Jasjeet Kaur (*since deceased*). Defendants No.7 Smt. Bhupinder is the wife of Ravinder @ Ravi Singh. Defendant No.6 and 14 to 16 (Bakshish Kaur, Sanjeev Kaur, Jagdeep Kaur & Gurfateh Singh) are the wife & children of Kulwant Singh @ Beant Singh. Performa defendant No.21 to 23 (Gurpreet Singh, Amandeep Singh & Vikram Singh) are the legal heirs of Smt. Jasjeet Kaur i.e. deceased daughter of Tej Partap Singh.

4. Shri Tej Partap Singh had expired on 26.03.1971. Smt. Darshan Kaur had expired on 24.02.2001, whereas Smt. Sudarshan Kaur had expired on 19.09.1983. Smt. Ravinder Kaur i.e., daughter of Tej Pratap Singh had expired on 19.08.2013

Pleadings in the plaint:

5. Since orders under challenge are regarding the rejection of plaint under Order VII Rule 11 CPC, it is necessary to have a look at the brief facts as pleaded in the plaint (*Annexure A1*).

5.1 As per para No.1 of the plaint, Tej Partap Singh was owner of land in three villages as per the following details:

Area	Village
988 Kanal - 6 Marla	Dara Kalan, Tehsil Thanesar, District Kurukshetra
1590 Bigha - 13 Biswa	Gitalpur, Tehsil Nilokheri, District Karnal
339 kanal - 8 marla	Dara Khurd, Tehsil Thanesar, District Kurukshetra

5.2 In para No. 2 of the plaint, it is pleaded by the plaintiff that during his life time, Tej Partap Singh had transferred major part of his property in favour of his wives Darshan Kaur and Sudarshan Kaur and sons i.e. defendants No.1 to 5 in the following manner: -

Para No.	Transferor	Transferee	Area	Village	(Remarks by this court)
2 (i)	Tej Partap Singh	Darshan Kaur and Sudarshan Kaur	928 kanal 17 marla	Gitalpur	<i>Date or mode of transfer not disclosed.</i>
2 (ii)	Tej Partap Singh	Darshan Kaur and Sudarshan Kaur	179 kanal 19 marla	Dara Khurd	<i>Date or mode of transfer not disclosed.</i>
2 (iii)	Tej Partap Singh	Kulwant Singh (defendant No. 1)	*222 kanal 16 marla *16 kanal 0 marla *89 kanal 15 marla	Dara Kalan	<i>Date or mode of transfer not disclosed.</i>
2(iv)	Tej Partap Singh	Bakshish Kaur (defendant No. 6)	<i>Details of land given but area not mentioned</i>	Dara Kalan	<i>Date or mode of transfer not disclosed.</i>
2(v)	Tej Partap Singh	Ravi Singh (defendant	*106 kanal 13 marla	Dara Kalan	<i>Date or mode of transfer not</i>

		No.2)	*33 kanal 9 marla		<i>disclosed.</i>
2(vi)	Tej Partap Singh	Jang Bahadur, Karambir & Malak Singh (Defendants No. 3 to 5)	*46 kanal 3 marla *510 kanal 0 marla	Dara Kalan	<i>Date or mode of transfer not disclosed.</i>

5.3 In para Nos.3 & 4 of the plaint, it is disclosed that Tej Partap Singh had died on 26.03.1971. His pedigree table is disclosed and it is claimed that plaintiff and defendants No.19 to 21 are entitled to 1/7th share in the estate of deceased Tej Partap Singh; and 1/4th share in the estate of deceased Darshan Kaur; whereas, defendants No.22 to 24 are entitled to 1/7th share in the estate of deceased Tej Partap Singh and 1/3rd share in the estate of Sudarshan Kaur.

5.4 In next para No.5 of the plaint, plaintiff has given details of the land, in which she along with defendants No.19 to 24 stake claim as per the aforesaid shares. These are as under: -

Para No.	Area	Village
5(i)	455 kanal 9 Marla	Gitalpur
5(ii)	337 kanal 19 marla	Dara Khurd
5(iii)	*122 kanal 4 marla *79 kanal 7 marla *16 Kanal 4 Marla	Dara Kalan Dara Kalan Dara Kalan

5.5 In para No.6 of the plaint, plaintiffs have given details of the land stated to be earlier owned by Smt. Darshan Kaur and Smt. Sudarshan Kaur, in which plaintiffs along with defendants No.19 to 21 claim 1/4th share; and defendants No.22 to 24 claim 1/3rd share. These are as under: -

Para No.	Area	Village
6(i)	928 kanal 17 Marla	Gitalpur
6(ii)	179 kanal 19 marla	Dara Khurd

5.6 In next para No.7 of the plaint, plaintiff claims that she moved an application on 23.06.2014 for sanction of mutation of inheritance after the death of her mother Ravinder Kaur on the basis of natural inheritance and then, on enquiry she found that defendants No.1 to 9 have already managed to procure false, forged and fabricated unregistered Will, which was stated to be got registered after the death of deceased Tej Partap Singh, with an ill intention and ill design to grab the estate of Tej Partap Singh in their names and to deprive the plaintiff and proforma defendants of their valuable rights in the suit property. Plaintiff also came to know that even the inheritance of estate of deceased Sudarshan Kaur and Darshan Kaur have been illegally mutated and that mutations have been unlawfully sanctioned in the name of contesting defendants No.1 to 18.

5.7 In para No.9 & 10 of the plaint, plaintiffs have given details of the land, which has gone to different beneficiaries on the basis of Will dated 20.03.1971 of the deceased Tej Partap Singh and that said Will was got registered on 16.07.1971 after the death of Tej Pratap Singh on 26.03.1971. Amongst others, Smt. Ravinder Kaur & Smt. Jasjeet Kaur i.e., two daughters of Tej Pratap Singh are also stated to be beneficiaries in the Will. In para No.11 of the plaint, plaintiffs have pleaded various grounds on the basis of which, Will of deceased Tej Partap Singh is alleged to be not executed by him and that same is a forged and fabricated document.

5.8 In para No.14 of the plaint, plaintiffs have further alleged that on the basis of some oral Will dated 16.11.1990 of Jasjeet Kaur, her land measuring 37 kanal 2 marla has been mutated in favour of defendant No.5.

5.9 In paras No.15 to 17 of the plaint, plaintiffs have given details of alleged illegal transactions of the transfers made by defendants No.1 to 9 in order to grab the right of the plaintiffs and proforma defendants in the various properties held by Smt. Darshan Kaur and Smt. Sudarshan Kaur, which have been ultimately got transferred in the name of defendant No.1 to 18 and their family members. Details of the transfers pertaining to the land

of Darshan Kaur and Sudarshan Kaur in village Gitalpur, as mentioned in these paras are stated in brief in the following table: -

Para	Mutation No.	Area	Sale deed No./Date	Transferee (s)
15(i)	153	150K - 8M	3103/ 22.03.1972	Gurpreet Singh s/o Gursharan Kaur (Sister of Sudarshan Kaur); and later on, got transferred in the name of Gurfateh Singh of Kulwant Singh by way of gift deed (mutation No.308 dated 07.03.2006
15 (ii)	155	165K - 9M	3103/ 22.03.1972	Gursharan Kaur (sister of Sudarshan Kaur), who further transferred the said land to Bakshish Kaur (Defendant No.6)
15 (iii)	156	102K - 1M	No details given	Varinder Singh son of Hamir Singh, father of Deep Kaur, i.e., sister in law of Amritpal Kaur-defendant No.8
15 (iv)	157	158K - 16M	22.04.1972	Defendant No.3 by way of decree No. 149 dated 11.05.1981 vide mutation No.174 dated 16.10.1984.
15 (v)	158	83K - 6 M	28.04.1972	Jang Bahadur Singh - defendant No.3.
15 (vi)	159 dated	76K - 13M	Nil/ 28.04.1972	Gurmail Singh son of Ram Singh, cousin of Bhupinder Kaur wife of Ravinder Singh-Defendant No.7. Out of Said land, Gurmail Singh transferred 0 K 10 M in Khasra No.11 of Rect. No.16 in the name of Gurfateh Singh son of defendant No.1.
15 (vii)	160	109K - 18M	24.08.1972	Tejwant Singh son of Hamir Singh, father of Deep Kaur, sister-in-law of defendant No.8 Amritpal Kaur.
15 (viii)	180	82K - 2 M	WILL	Defendant No.9 by inheritance of Sudarshan Kaur on the basis of alleged oral Will. Out of this land, 16K 0M was sold by Nirmal Kanta to Malak Singh son of Hakam Singh vide sale deed dated 16.02.1989.
15 (ix)	180	33 K and 16K 0 M	Nil	Defendant No.3 by inheritance of Darshan Kaur on the basis of alleged oral Will.

Details of the transfers pertaining to the land of Darshan Kaur and Sudarshan Kaur in village Dara Khurd, as stated in the second part of para 15 plaint in brief are given in the following table: -

Para	Mutation No./Date	Area	Transferee
(i)	731/ 22.03.1972	0K - 19M	Gurpreet Singh, son of Gursharan Kaur, sister of Sudarshan Kaur
(ii)	732/ 26.04.1972	0K - 19M	Gursharan Kaur
(iii)	800/ 05.12.1974	102K - 16M	Defendants No.4, 6 to 8 and Rupinder Kaur @ Bhupinder wife of Jang Bahadur Singh
(iv)	974/ 14.04.1984	1K - 13M	Defendant No.5 by way of inheritance of Sudarshan Kaur on the basis of oral Will.
(v)	1049/ 1609.1986	0K - 10M	Defendant No.3 vide oral exchange with defendant N: 6
(vi)	1216 (Date not mentioned)	42K - 15M & 47K-0M	Defendant No.5 got exchanged from defendant N: 6
(vii)	1300/ 04.01.1990	80K - 11M	Kuldeep Singh nephew of Darshan Kaur from defendant N: 7
(viii)	950/ (Date not mentioned)	9K -5M	Ramesh Chand from Amrit Kaur, who further transferred to defendant No.5 vide mutation N: 1685.
16	2495 (Date not mentioned)	No details given	Defendant N: 5 managed to get land of Darshan Kaur of village Dara Khurd in his name on the basis of oral WILL.
16	974 (Date not mentioned)	No details given	Defendant N: 5 managed to get land of Sudarshan Kaur of village Dara Khurd in his name on the basis of oral WILL.
17	297 (Date not mentioned)	No details given	Defendant N: 3 managed to get land of Darshan Kaur of village Gitalpur in his name on the basis of oral WILL.
17	180 (Date not mentioned)	No details given	Defendant N: 3 managed to get land of Sudarshan Kaur of village Gitalpur in his wife's (Nirmal Kanta)'s name on the basis of oral WILL.

5.10 It is pleaded further that there is no law on earth to recognize any oral Will, which in itself is sufficient to show the fraudulent transactions, credentials and misdeeds on the part of defendants No.1 to 9 in order to grab the entire estate of deceased Tej Partap Singh besides that of Darshan Kaur and Sudarshan Kaur. It is pleaded that defendants No.6 to 18 had no right of inheritance qua the property of deceased persons named above, whereas defendants No.1 to 5 had right of inheritance in the estate of deceased Tej Partap Singh only to the extent of share of 1/7th share each along with

Ravinder Kaur and Jasjeet Kaur. Similarly, only defendant Nos.3 to 5 along with Ravinder Kaur had right of inheritance in the estate of deceased Darshan Kaur to the extent of 1/4th share each and only defendant Nos.1 and 2 along with Jasjeet Kaur had the right of inheritance in the estate of deceased Sudarshan Kaur to the extent of 1/3rd share each. Therefore, acquisition of ownership rights by defendants No.1 to 5 in excess of their respective shares and similarly, acquisition of right of ownership by defendants No.6 to 18 qua the estate of deceased persons named above by way of impugned Will and oral Wills are illegal, null and void and these transfers by way of alleged Will dated 19.03.1971 of Tej Partap Singh and alleged oral Wills of Darshan Kaur and Sudarshan Kaur or by any other mode of transfers in the name of defendants No.1 to 18 are the result of fraud and misrepresentation and liable to set aside being null and void.

5.11 In para No.20 of the plaint, plaintiffs further allege that defendants No.1 to 18 in collusion with each other got various transactions of transfers in respect of part of the suit property pertaining to deceased Darshan Kaur and Sudarshan Kaur in favour of various other persons and then re-transacted the same in their name or their family members. The details of the various transactions, which are alleged to be null and void and so, not binding on the rights of plaintiff & performas defendants, as given by the plaintiff in para Nos.20A (of village Gitalpur) & 20B (of village Data Khurd) are as under in brief: -

S.N:	Para 20 A	Sale Deed/Mutation No./Date	Area	Transferor	Transferee
1	(i)	Sale deed 3103/22.03.1972	150K 8M	Darshan Kaur and Sudarshan Kaur	Gurpreet Singh
2	(ii)	Sale deed 3103/22.03.1972	165K 9M	-Do-	Gursharan Kaur
3	(ii)	Sale deed 282/241/22.03.1972	152K 1M	-Do-	Varinder Singh
4	(ii)	Sale deed 28/2040/22.03.1972	158K 16M	-Do-	Randeep Singh

5	(iii)	Sale deed 267/ 241/28.04.1972	82K 6M	-Do-	Jang Bahadur Singh (defendant No.3)
6	(iv)	Sale Deed 283/ 249/28.04.1972	76K 17M	-Do-	Gurmail Singh
7	(v)	Sale Deed 264/ 241/28.04.1972	109K 18 M	-Do-	Tejwant Singh
8	(vi)	Sale Deed 3282/1 (Date not disclosed)	32K 11M	Shakuntala Devi	Randeep Singh
9	(vi)	Decree N: 149 dated 11.05.1981 (No further details disclosed)	125K 18M	Randeep Singh	Jang Bahadur Singh (defendant No.3)
10	(vii)	Sale Deed 552/1/ 16.02.1989	16K 0M	Darshan Kaur and Nirmal Kanta	Malook Singh, Swaran Kaur, Hardeev Singh
11	(viii)	Gift Deed no. 1222/1/ 07.03.2006	137K 10M	Gurpreet Singh	Bakshish Kaur (Deft. No.6)
12	(ix)	Sale Deed 4079/1 (Date not disclosed)	73K 13M	Darshan Kaur and Sudarshan Kaur	Achru Babu
S.N:	Para 20 B	Sale Deed/Mutation No./Date	Area	Transferor	Transferee
13	(i)	Sale Deed 3102/ 23.03.1972	0K 19M	Darshan Kaur and Sudarshan Kaur	Gurpreet Singh
14	(ii)	Sale Deed 3103/ 22.03.1972	0K 19M	-Do-	Gurdarshan Kaur
15	(iii)	Decree dt. 05.12.1974 [Case No.853/1974)	102K 06M	-Do-	Bakshish Kaur (Deft. No.6), Rupinder Kaur (wife of Deft. No.3), Bhupinder Kaur (Deft. No.7), Amrit Kaur (Deft. No.8) and Karambir Singh (Deft. No.4)
16	(iv)	Sale Deed 29.04.1980 (Case No.440)	31K 16M	Bhupinder Kaur @ Ravinder Kaur	Sunder Devi (Deft. No.21)
17	(v)	Oral Exchange dated 16.06.1983	73K 16M	Bhupinder Kaur	Malak Singh (deed. No.5)
18	(vi)	Sale Deed 1855/	73K	Amrit Kaur	Ramesh Chand

		05.07.1983	16M	(deft N: 8)	
19	(vii)	Decree 116/93 dated 11.03.1993 (No further details disclosed)	9K 1M	Ramesh Chand	Malak Singh (deed. No.5)
20	(viii)	Sale Deed 3859/07.11.2000	1K 14M	Malak Singh (deed. No.5)	Ram Parkash
21	(ix)	Sale Deed 5935/28.01.2002	8K 0M	-Do-	Lalita and Rajan
22	(x)	Sale Deed 3039/24.08.2001	2K 8M	-Do-	Puran Chand and Anil Kumar
23	(xi)	Sale Deed 5082/13.09.2004	11K 10M	Malak Singh & Amrit Kaur (deft N: 5 & 8)	Vanit
24	(xii)	Sale Deed 5081/13.09.2004	8K 10M	Malak Singh (deed. No.5)	Rajnish
25	(xiii)	Dastbardari No.5220 dt. 30.08.2005	26K 0M	Karambir Singh (deft. N: 4)	Harpreet Kaur d/o Karam Bir Singh
26	(xiv)	Sale Deed 2247/26.11.1971	20K 16M	Bakshish Kaur (deft. N: 6)	Ram Kishan and Sudagar Chand

5.12 Plaintiffs allege that all the aforesaid deeds of transfers/ mutations are liable to be declared as null, illegal and void and that they along with the proforma defendants are entitled in the entire property as per their share as per details given earlier. In para 21 of the plaint, plaintiff has given further details of the lands situated in three villages i.e. Dara Kalan, Dara Khurd and Gitalpur and claimed that she along with proforma defendants are entitled to possess the said entire land. It is claimed by the plaintiff that since defendants No.1 to 5 have already sold the land in excess to their share, which they were entitled to, by way of natural succession from Tej Partap Singh, Sudarshan Kaur and Darshan Kaur, therefore, plaintiff and proforma defendants are entitled to own and possess the entire land as per details given in para No.21 of the plaint, by way of natural succession.

5.13 In para Nos.23 and 25 of the plaint, plaintiff has pleaded about the cause of action to the effect that she came to know about the alleged illegal and unlawful modus operandi of defendants No.1 to 18 and various other persons, after the death of her mother Ravinder Kaur, when she moved

an application for sanction of mutation of inheritance of her mother on 23.06.2014 and then came to know about all the transactions as have been mentioned earlier and also about the alleged Will of Tej Partap Singh and the oral Wills of Darshan Kaur and Sudarshan Kaur.

5.14 With all the aforesaid averments, plaintiffs prayed for the following reliefs: -

- (i) Decree for declaration to the effect that Will dated 20.03.1971 and mutation No.722 of Village Dara Khurd, 152 of Village Gitalpur and mutation of Village Dara Kalan, sanctioned on the basis of said Will are null, illegal and void and not binding on the rights of the plaintiff and proforma defendants.
- (ii) Decree for declaration to the effect that all the sale deeds and deeds of transfers/mutations of transfers as detailed in the plaint are null, illegal and void and so liable to be set aside.
- (iii) Decree for declaration that plaintiff along with proforma defendants No.19 to 21 are owners in joint possession to the extent of $1/7^{\text{th}}$ share in the suit property i.e. estate of deceased Tej Partap Singh as detailed in para No.5 of the plaint; and also owners in joint possession to the extent of $1/4^{\text{th}}$ share in the suit property i.e. estate of deceased Darshan Kaur detailed in para No.6 of the plaint; and that defendant Nos.22 to 24 are entitled to $1/7^{\text{th}}$ share in the suit property i.e. estate of deceased Tej Partap Singh as per details given in para No.5 of the plaint and that they are also owners in joint possession to the extent of $1/3^{\text{rd}}$ share in the estate of Sudarshan Kaur i.e. the property mentioned in para No.6 of the plaint and that defendants No.1 to 5 are owners in joint possession to the extent of $1/7^{\text{th}}$ share each in the estate of deceased Tej Partap Singh and similarly, they are entitled to their respective shares in the estate of Sudarshan Kaur and Darshan Kaur as per natural succession.

- (iv) Plaintiff also prays for an alternative decree of declaration to the effect that she along with proforma defendants are owner in possession of the entire suit property detailed in para No.5, 6 and 17 of the plaint in equal shares to the extent of $1/7^{\text{th}}$ share each.
- (v) Plaintiff further prays for decree of joint possession alongwith performa defendants of the suit property as per the shares detailed earlier; or in the alternative for joint possession of property detailed in Para 21 (*wrongly mentioned as Para 27*) of the plaint to the extent of $1/7$ share each in favour of plaintiff & performa defendants.
- (vi) Decree for permanent injunction to restrain the defendants from alienating the suit property detailed in para Nos.5 and 6 of the plaint.
- (vii) Any other relief, to which plaintiff & performa defendants are found entitled.

Grounds pleaded by defendants to reject the plaint:

6.1 After putting in appearance, the contesting defendants moved application under Order VII Rule 11 read with Section 151 CPC (*Annexure A2*). It was pleaded that plaintiffs had challenged the Will of Tej Partap Singh besides that of Darshan Kaur, Sudarshan Kaur and Jasjeet Kaur in this case and also challenged 23 sale deeds as per details given in para No.20 of the plaint. They contended that cause of action to challenge all the 4 Wills and 23 sale deeds is different and therefore, same could not be joined in one suit. It was pleaded further that all the defendants are not interested in four different Wills detailed above, as cause of action, if any, to challenge all the 23 sale deeds is different and the same cannot be joined. All the defendants are not interested in every part of the suit property and subject matter of the sale deed.

6.2 Defendants have further given details, as to which of the defendants could be interested in the Will of different deceased persons i.e. Tej Partap Singh, Sudarshan Kaur, Darshan Kaur and Jasjeet Kaur.

6.3 Defendants further submitted that the 23 transfers/sale deeds, as detailed in para No.20 of the plaint, are in favour of various persons, most of whom are not parties to the suit. Each sale is a separate transaction and cause of action to challenge each of the sale deed is different and therefore, the same could not be joined in the present suit, particularly when transferees/vendees of the various transactions are different. It was claimed that suit is, thus, barred under Order I Rule 3 and Order II Rules 3 & 4 CPC because of multifarious of cause of action and parties and so, plaint is liable to be rejected on this ground alone.

6.4 Defendants pleaded further that though plaintiff has challenged various sale deeds and transfers as per details given in para Nos.15 and 20 of the plaint, but despite being out of possession of the suit property and despite claiming possession over the property in the present suit, plaintiff has not affixed the *ad valorem* Court fee and that she is liable to affix the *ad valorem* Court fee on the market value of the entire suit property.

6.5 It was pleaded further that suit is hopelessly time barred, inasmuch as Tej Partap Singh had died on 26.03.1971 and therefore, cause of action if any, had arisen to the mother of the plaintiff on 26.03.1971, but the present suit has been filed in the year 2015 and as such, it is barred by limitation. It is pleaded that mother of the plaintiff was well within the knowledge of the Will of Tej Partap Singh since after his death and had appeared before the Revenue Authorities for sanction of the mutation on the basis of the Will. Not only this, Smt. Ravinder Kaur i.e. mother of the plaintiff had received the benefits under the Will and had received the properties of Tej Partap Singh through various persons for valuable consideration.

6.6 Similarly, Darshan Kaur had died on 24.02.2001 and cause of action, if any, had arisen to the mother of the plaintiff on that day i.e. 24.02.2001, and so, the suit filed in 2015 is hopelessly time barred. Legal heirs of Darshan Kaur including Ravinder Kaur, who were well within the knowledge of the Will of Darshan Kaur since after her death had appeared before Revenue Authorities for sanction of the mutation on the basis of the

Will and for this reason also, plaint is liable to be rejected being barred by limitation.

6.7 By pleading all the above grounds, the respondents-defendants prayed for rejection of the plaint.

7. In reply (*Annexure A3*) to the aforesaid application, plaintiff prayed for dismissal of the same.

Trial Court findings:

8. After hearing both the sides, learned Civil Judge (Sr. Divn.), Kurukshetra, observed that plaint was sought to be rejected mainly on three grounds i.e. bad for joinder of cause of action, non-affixation of *ad valorem* Court fee and suit being barred by limitation.

i) Trial Court held that there can be joinder of causes of action and for that leave of the Court is not required. The court must avoid multiplicity of suits in normal course and must determine all causes of action in one suit, even though there is separate causes of action, if it is not going to result in undue delay and embarrassment to the questions involved in the suit. The Trial Court held that all reliefs, which can be claimed in the suit, should be prayed for and as such, suit was not bad under Order II Rule 2, 3 & 4 IPC for joinder of multifarious causes of action.

ii) Trial Court found further that since joint possession along with annulment of the sale deeds (approximately 23 in number) was the dominant relief claimed by the plaintiff and plaintiff was seeking cancellation of the said sale deeds, therefore, she was required to pay *ad valorem* Court fee on the consideration amount of these sale deeds. However, the Court further held that in case suit filed by the plaintiff was found to be maintainable, then requisite time shall be given to the plaintiff to affix *ad valorem* Court fee.

iii) After noticing the date of death of Tej Partap Singh and his two wives Darshan Kaur and Sudarshan Kaur besides that of plaintiff's mother Ravinder Kaur in the light of provisions of Hindu Succession Act, the trial Court held

that the plaintiff could not succeed to the estate of deceased Tej Partap Singh during the life time of her mother Ravinder Kaur and as such, she did not have any cause of action to file the said suit and for this reason, the plaint was liable to be rejected under Order VII Rule 11 CPC.

iv) Trial Court further found the suit to be clearly barred by limitation and that by way of clever drafting, plaintiff had tried to create an illusion of a cause of action, which was required to be nipped in the bud at the very first beginning and as such, the plaint was liable to be rejected on this ground as well.

V) With above reasoning, the trial Court allowed the application under Order VII Rule 11 CPC vide order dated 02.08.2017 by rejecting the plaint on the ground of bar of limitation and there being no cause of action to the plaintiff to file the suit.

Observations and Findings of appellate court:

9.1 In the appeal filed by the plaintiffs alongwith performa defendant N: 22 (*transposed as appellant*) against the aforesaid order, the First Appellate Court analyzed the scope and ambit of Order VII Rule 11 CPC and thereafter, taking up the issue of payment of *ad valorem* Court fee, found that plaintiff had not claimed possession of the suit property and had only sought declaration regarding the assailed Wills and the sale deeds to be null and void. After noticing that plaintiff was not executants of any of these documents and by placing reliance upon ***Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others, 2010 (2) RCR 564***, the appellate Court held that plaintiff was not required to pay *ad valorem* Court fee.

9.2 However, the First Appellate Court upheld the finding of the trial Court regarding the plaintiff having no cause of action and the suit being barred by limitation. By way of lengthy and detailed order dated 30.05.2024, the appellate Court considered various aspects and provisions of Hindu Succession Act to come to the conclusion that during the life time of her

mother Smt. Ravinder Kaur, plaintiff had no locus standi to challenge the inheritance of her maternal grandfather i.e. Tej Partap Singh.

9.3 Upholding the order of the trial Court, the appeal was dismissed vide order dated 30.05.2024, thus affirming the finding that plaintiff deserved to be rejected.

Contentions raised by Ld. Senior Counsel for appellants – plaintiffs:

10.1 Assailing the orders passed by the Courts below, it is contended on behalf of plaintiff-appellant by Ld. senior advocate Sh. Amit Jain that plaintiff brought the suit claiming her rights in the entire suit property on the basis of natural inheritance of Tej Partap Singh and his widows Darshan Kaur and Sudarshan Kaur. Ld. counsel has drawn attention towards the plaint to contend that on numerous grounds, the Will allegedly executed by deceased Tej Partap Singh on 20.03.1971 was null and void. Plaintiff has given specific instances to highlight the illegal action of the defendants, whereby property held by Darshan Kaur and Sudarshan Kaur i.e. widows of Tej Partap Singh had been got illegally mutated in favour of the defendants. It is contended that Courts below have erred in law in ignoring the basic principle to decide application under Order VII Rule 11 CPC, as per which only the averments made in the plaint are required to be seen. However, the Courts below have not only proceeded to assume certain facts but have gone beyond to observe the facts as stated in the plaint while passing the impugned orders. It is argued that observation of the Courts below that no cause of action was made out in the plaint is wholly misconceived and erroneous and there was no basis to hold so. Learned senior counsel has relied upon ***Saranpal Kaur Anand Vs. Parduman Singh Chandhok and others, 2022(2) RCR Civil 536.***

10.2 Learned senior counsel contends further that the question of limitation cannot be decided in a summary manner and that the plaintiffs-appellants have specifically stated in the plaint that limitation arose from the date of knowledge. It is argued that the question of limitation is a mixed question of law and fact and simply by holding that the plaintiffs could not

challenge the inheritance of Tej Partap Singh, the suit could not be held to be barred by limitation without considering the contentions raised in the plaint.

10.3 It is urged that similarly, the courts below have erred in observing that plaintiffs- appellants did not have the *locus standi* to maintain the suit. Learned counsel argues that Ravinder Kaur, the mother of the appellant was competent to challenge the Will in question and so, the right to sue survived in favour of the appellants being the successor-in-interest of Ravinder Kaur and as such, the plaintiffs were fully entitled and competent to challenge the Will after the demise of Ravinder Kaur.

10.4 It is contended further that reference by the Lower Appellate Court to the alleged sale deeds executed by Ravinder Kaur is beyond the averments made in the plaint or in the application and that claim of the respondents that Ravinder Kaur has accepted the Will or the Will stood implemented is beyond the pleadings set up in the plaint and was subject to the evidence to be led by the parties during trial. Similarly, the observation of the trial Court to the effect that Will was presented for registration by Ravinder Kaur is contrary to the record, as the bare perusal of the endorsement on the Will showed that the Will was presented for registration by Kulwant Singh i.e. defendant No.1 on 16.07.1971 for the purpose of registration and not by Ravinder Kaur.

10.5 Still further, it is argued that the Courts below have erred in law in observing that plaintiffs could not claim directly the share in the property of deceased Tej Partap Singh. It is alleged that in haste to reject the claim, the Courts below erred in law in ignoring that plaintiffs were claiming on the basis of natural succession through Ravinder Kaur, who had died after the demise of Tej Partap Singh.

**Contentions raised by Ld. Senior Counsel for contesting respondents-
defendants:**

11.1 Refuting all the afore-said contentions, learned Senior Advocate Shri Puneet Bali appearing for the contesting respondents

defended the orders passed by the Courts below and contended that plaint of the suit deserved to be nipped in the bud itself, as it is nothing but vexatious & frivolous litigation filed by the plaintiff to unsettle old inheritance of her maternal grandfather, having been filed to harass the contesting defendants. Attention is drawn towards the fact that after the death of Tej Partap Singh on 26.03.1971, Smt. Ravinder Kaur i.e. mother of the plaintiff remained alive till 19.08.2013 i.e. for more than 42 years but during her life time, said Ravinder Kaur did not challenge the Will either of her father or of the mothers Sudarshan Kaur or Darshan Kaur. Not only this, the property as per the Will of Tej Partap Singh was mutated in favour of all the legal heirs including Ravinder Kaur and she even made transactions on the basis of the property held by her on the basis of Will.

11.2 Learned senior counsel contends further that succession never remains in abeyance and therefore, trial Court and the Appellate Court rightly held that after the death of Tej Partap Singh, it is Ravinder Kaur who was one of the Class-I legal heir and not plaintiff, who is claiming through Ravinder Kaur. It is argued that only the granddaughter of the deceased daughter of the deceased, can be a Class-I legal heir and not the granddaughter of a living daughter of the deceased.

11.3 Learned Senior Advocate further draws attention towards the fact that numerous sale deeds and other documents have been challenged in para Nos.15 and 20 of the plaint, without impleading the transferees of those transactions. They are not even aware about the challenge being given to the transactions in their favour. It is argued that in the circumstances, suit is bad for non-joinder of necessary parties as well.

11.4 Not only this, plaintiff is seeking joint possession just as a *sham* relief. In fact, plaintiff is out of possession of all the properties, the transactions/transfers of which have been challenged by her. Under the garb of seeking joint possession along with the contesting defendants, plaintiff want to avoid the payment of the ad valorem Court fee and in the facts and circumstances, when neither plaintiff nor the defendants are in possession of

those properties, which have already been sold/transferred, plaintiff is required to pay *ad valorem* Court fee.

11.5 Learned Senior Advocate argues further that plaintiff has claimed rights on the basis of natural succession of her maternal grandfather and God forbids, in case she had claimed the right on the basis of natural succession of her great grandfather or previous ancestors, God knows how many transactions would have come under challenge to be unsettled. Learned senior counsel contends that if such type of litigation is allowed to proceed, there will be no settlement of property and every transaction done by the ancestors, may be 100s years old, will be unsafe.

11.6 With all the above submissions, learned Senior Advocate has prayed for dismissal of the appeal.

Analysis by this Court:

12. This Court has considered submissions of both the sides and has appraised the record carefully.

13. Order 7 Rule 11 CPC reads as follows:-

“11. Rejection of plaint.

The plaint shall be rejected in the following cases-

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9:

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.”

Scope and object of Order VII Rule 11 CPC:

14.1 The scope and object of Order VII Rule 11 has been examined by Hon’ble Supreme Court in ***Kum. Geetha vs. Nanjundaswamy 2023 AIR (Supreme Court) 5516***. Hon’ble Apex Court referred to ***Dahiben v. Arvindbhai Kalyanji Bhanusali (2020) 7 SCC 366***, wherein after taking note of the provisions of Order VII Rule 11 CPC, relevant principles were succinctly explained as under :

“23.2 The remedy under Order 7 Rule 11 is an independent and special remedy, wherein the court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

23.3 The underlying object of Order 7 Rule 11 (a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

23.4 In ***Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315 followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, 1998 SCC OnLine Guj 281:(1998) 2 GLH 823***, this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words :

“12. ...The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the court, and exercise

the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation, the court readily exercises the power to reject a plaint, if it does not disclose any cause of action.”

23.5 The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to.

23.6 Under Order 7 Rule 11, a duty is cast on the court to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint [*Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512*], read in conjunction with the documents relied upon, or whether the suit is barred by any law. ...

23.9 In exercise of power under this provision, the court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

23.10. At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration. [*Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137*]

23.11. The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in *Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I* [*Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512*] which reads as: (SCC p. 562, para 139)

“139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed.”

23.12. In ***Hardesh Ores (P) Ltd. v. Hede & Co. [Hardesh Ores (P) Ltd. v. Hede & Co., (2007) 5 SCC 614]*** the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. ***D. Ramachandran v. R.V. Janakiraman [D. Ramachandran v. R.V. Janakiraman, (1999) 3 SCC 267; See also Vijay Pratap Singh v. Dukh Haran Nath Singh, AIR 1962 SC 941]*** .

23.13. If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order 7 Rule 11 CPC.

23.14. The power under Order 7 Rule 11 CPC may be exercised by the court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of Saleem Bhai v. State of Maharashtra [***Saleem Bhai v. State of Maharashtra, (2003) 1 SCC 557***]. The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in ***Azhar Hussain case [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315. Followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, 1998 SCC OnLine Guj 281 : (1998) 2 GLH 823]***.

23.15. The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaint “shall” be rejected if any of the grounds specified in clauses (a) to (e) are made out. If the court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the court has no option, but to reject the plaint”.

14.2 After referring to the legal position as above, Hon’ble Apex Court concluded ***Kum. Geetha vs. Nanjundaswamy (supra)***, as under

7. In simple terms, the true test is first to read the plaint meaningfully and as a whole, taking it to be true. Upon such reading, if the plaint discloses a

cause of action, then the application under [Order VII Rule 11 of the CPC](#) must fail. To put it negatively, where it does not disclose a cause of action, the plaint shall be rejected.

15. Thus, as per the legal position, the averments made in the plaint in conjunction with the documents relied upon, and without looking into the pleas taken by the defendant in the written statement or application for rejection of the plaint on the merits, are to be considered to conclude as to whether the plaint deserve to be rejected or not. If the court finds that the assertions made in the plaint are contrary to statutory law, or judicial dicta or if on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit and does not disclose a right to sue, the court would be justified in exercising the power under Order 7 Rule 11 CPC so as to reject the plaint.

16. In this regard, it will also be relevant to refer to the observations made by Apex Court through Hon'ble Mr. Justice V.R.Krishna Iyer in the case of ***T. Arivandandam vs T. V. Satyapal & Another (1977) 4 SCC 467***, which are as under

“5.....The learned Munsif must remember that if on a meaningful — not formal — reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10 CPC. An activist Judge is the answer to irresponsible law suits.....”

17. In another case titled ***Church of Christ Charitable Trust and Educational Charitable Society Vs. Ponniamman Educational Trust (2012) 8 SCC 706***, Hon'ble Apex Court observed and held as under:

“13. While scrutinizing the plaint averments, it is the bounden duty of the trial Court to ascertain the materials for cause of action. The cause of action is a bundle of facts, which taken with the law applicable to them gives the

plaintiff the right to relief against the defendant. Every fact which is necessary for the Plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words "cause of action". A cause of action must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue."

18. Similar views have been expressed by Hon'ble Apex Court in ***Saleem Bhai v. State of Maharashtra (2003 (1) SCC 557; Sopan Sukhdeo Sable Vs. Assistant Charity Commissioner (2004) 3 Supreme Court Cases 137, I.T.C. Ltd. v. Debts Recovery Appellate Tribunal [(1998) 2 SCC 70]; Madanuri Sri Rama Chandra Murthy vs. Syed Jalal (2017) 13 SCC 174; and P.C. Guru Raj Reddy Rep. By GPA Laxmi Narayan Reddy vs. P. Neradha Reddy and others", 2015(2) R.C.R.(Civil)***

19. Keeping in mind the legal principles enunciated above, impugned orders passed by the courts below are to be analysed as to whether they pass the legal test or not.

Points involved:

20. Based upon the rival contentions as raised by Id. Sr. Advocates from both the sides, this Court is required to look into the application under Order VII Rule 11 CPC as to whether the plaint was liable to be rejected for the following reasons:-

- i. No cause of action.
- ii. No locus standi.
- iii. Bar of limitation.
- iv. Non-joinder of necessary parties
- v. Court Fee.

Grounds of Locus Standi & Cause of action:

21. Plaintiffs claim right and entitlement to the suit property on the basis of natural succession in the estate of Tej Partap Singh, who had landed property in three villages, namely, Gitalpur, Dara Kalan and Dara Khurd, as per details given in para No.1 of the plaint.

22. As per own case of the plaintiff, during his life time, Tej Partap Singh had already transferred major portion of his property in favour of his wives Darshan Kaur and Sudarshan Kaur and the sons, i.e. defendant Nos.1 to 5 as per the details given in para No.2 of the plaint. It is not the case of the plaintiff that property in the hands of Tej Partap Singh was his ancestral property and as such, it is to be assumed that property was self-acquired or personal property of Tej Partap Singh. Since Tej Partap Singh had died on 26.03.1971, it means that the property detailed in para No.2 of the plaint had already been disposed of by him in favour of his wives and sons, prior to his death i.e. 26.03.1971. Here itself, it may be noticed that in the said para, the mode of transfer is not disclosed by the plaintiff, as to whether the property was sold, gifted or transferred in any other manner.

23. Be that as it may, plaintiffs now claim share in the property on the basis of natural succession in the land as per details given in para No.5 of the plaint i.e. the land which was still in the hands of Tej Partap Singh at the time of his death. Tej Partap Singh at the time of his death, left behind his 02 widows, namely Darshan Kaur & Sudarshan Kaur; 05 sons and 02 daughters. Had the property of Tej Partap Singh been transferred as per natural succession, $1/8^{\text{th}}$ share would have gone to the two widows equally; whereas $1/8^{\text{th}}$ share each would have gone to his 07 children. However, Tej Partap Singh allegedly left behind a Will dated 20.03.1971 and his property went to different beneficiaries as per the details given in para Nos.9 and 10 of the plaint.

24. Admittedly, Ravinder Kaur, one of the daughters of Tej Partap Singh and the mother of the plaintiff was one of the beneficiaries as per the assailed Will of Tej Pratap Singh. Plaintiffs have challenged the Will dated 20.03.1971 and the three consequent mutations on the basis of the said Will, i.e. mutation No.722 of village Darapur, mutation No.152 of village Gitalpur and the mutation of village Dara Kalan sanctioned to be null, illegal and void by pleading numerous grounds.

25. Apart from the land which was owned by Tej Partap Singh, plaintiffs further claimed right, title and interest in the property, which was owned by Darshan Kaur and Sudarshan Kaur as per the details given in para No.6 of the plaint, without disclosing as to whether that property had been inherited by both of them from Tej Partap Singh or whether it was their own property. If para N: 2 & 6 are read together, it will make out that property detailed in para No.6 of the plaint came to Darshan Kaur and Sudarshan Kaur from their husband Tej Partap Singh and so, obviously the same had become their personal property.

26. Darshan Kaur had died on 24.02.2001 and in case, the property owned by her was to be inherited by way of natural succession, the same was to be inherited by her four natural heirs i.e. three sons and one daughter i.e. Ravinder Kaur.

27. Sudarshan Kaur had already expired on 19.09.1983 and had her property been inherited by way of natural succession, the same obviously would have gone to her three legal heirs, i.e. two sons and one daughter.

28. However, plaintiffs have challenged the various transactions, whereby the property owned by Darshan Kaur and Sudarshan Kaur has been transferred in the name of defendant Nos.1 to 9 as per details given in para Nos.15 to 17 of the plaint. It is alleged that defendant Nos.1 to 5 succeeded in getting the mutations of inheritance of Darshan Kaur and Sudarshan Kaur in their favour on basis of oral Wills. Those oral Wills, the details of which are not given, are also challenged by the plaintiffs.

29. With the aforesaid averments made in the plaint, the first question arises as to whether the plaintiffs have locus standi and cause of action to file the suit so as to challenge the Wills of Tej Partap Singh, Darshan Kaur and Sudarshan Kaur apart from the various transactions made by them.

30. It is the cardinal principle of law that succession does not remain in abeyance and the rights of the legal heirs qua succession are settled immediately at the time of the death. Therefore, as soon as Tej Partap Singh

died on 26.03.1971, his property was to be succeeded in natural course either in favour of his natural legal heirs, or in case he had left behind a Will, the same was to be transferred in favour of the beneficiaries of the Will.

31. Admittedly, the property went in favour of the beneficiaries of the Will. It is the beneficiaries, natural heirs or affected minor, if any through guardian, who could have challenged the Will of Tej Partap Singh. Smt. Ravinder Kaur, the mother of plaintiff Gurpreet Kaur, was one of the natural legal heirs of deceased Tej Partap Singh, who could have challenged the Will. Smt. Ravinder Kaur remained alive till August, 2013, i.e. for a period of more than 42 years from the date of death of her father Tej Partap Singh. However, plaint is completely silent that during her life time, she ever challenged the said Will. In the circumstances, the question is as to whether plaintiffs, who are children of Smt. Ravinder Kaur, can challenge the Will of Tej Pratap Singh.

32. Section 8 of the Hindu Succession Act, 1956 provides for the general rules of succession in case of Males. The same reads as under: -

“8. General rules of succession in the case of males.

The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter:--

- (a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;
- (b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;
- (c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and
- (d) lastly, if there is no agnate, then upon the cognates of the deceased.

33. As per the Schedule referred in Section 8 of the Hindu Succession Act, following heirs, fall in Class-I and Class-II. -

Class I	
• Son	• widow of a pre-deceased son
• daughter	• son of a pre-deceased son of a pre-deceased son
• widow	• daughter of a pre-deceased son of a

	pre-deceased son
• mother	• widow of a pre-deceased son of a pre-deceased son
• son of a pre-deceased son	• son of a predeceased daughter of a pre-deceased daughter
• daughter of a pre-deceased son	• daughter of a pre-deceased daughter of a pre-deceased daughter
• son of a pre-deceased daughter	• daughter of a pre-deceased son of a pre-deceased daughter
• daughter of a pre-deceased daughter	• daughter of a pre-deceased daughter of a pre-deceased son

Class II	
Entry	Heirs
I.	Father
II.	(1) Son’s daughter’s son, (2) son’s daughter’s daughter, (3) brother, (4) sister
III.	(1) Daughter’s son’s son, (2) daughter’s son’s daughter, (3) daughter’s daughter’s son, (4) daughter’s daughter’s daughter.
IV.	(1) Brother’s son, (2) sister’s son, (3) brother’s daughter, (4) sister’s daughter.
V.	Father’s father; father’s mother
VI.	Father’s widow; brother’s widow
VII.	Father’s brother; father’s sister
VIII.	Mother’s father; mother’s mother
IX.	Mother’s brother; mother’s sister

Explanation.—In this Schedule, references to a brother or sister do not include references to a brother or sister by uterine blood."

34. It is clear from the aforesaid Schedule that though daughter and son of a pre-deceased daughter fall in Class-I category, but daughter and son of a living daughter does not fall even in Class-II category.

35. Since Ravinder Kaur was alive, when Tej Partap Singh died, only she & her sister fell in the category of Class-I legal heir alongwith sons & widows of deceased Tej Pratap. As such, plaintiffs being daughter and son of a living daughter i.e., Ravinder Kaur of Tej Pratap Singh, cannot be allowed to claim any right in the estate of deceased Tej Partap Singh as long as their mother was alive. Even after the death of their mother Ravinder Kaur, plaintiffs will get the share only out of the property, which her mother Ravinder Kaur had, whether personal or inherited by whatever means i.e. by natural succession or by Will. Plaintiffs have absolutely no right to challenge the Will of Tej Partap Singh, as they do not fall amongst the Class-I legal heir of the deceased.

36. In ***Tej Bahadur Vs. Narinder Modi AIR 2021 SC 217***, it has been held by Hon'ble Supreme Court of India that:

"It is settled that where a person has no interest at all, or no sufficient interest to support a legal claim or action he will have no locus standi to sue. The entitlement to sue or locus standi is an integral part of cause of action."

37. In ***Radha Bai Vs. Ram Narayan (2019) 17 SCALE 64***, Radha Bai filed a suit seeking entitlement to a share in the suit property, claiming through her father Saheblal. The suit land, in the said case came in the hands of Sukhdeo as ancestral property, in which Sukhdeo and his sons Janakram and Pilaram were having joint shares. Radha Bai's father Saheblal was son of Janakram. Saheblal predeceased Janakram (his father) as well as Sukhdeo (his grandfather). In the said backdrop, Hon'ble Supreme Court of India opined that the consistent view of Hon'ble Apex Court is that the grandson or granddaughter is clearly excluded from heirs in Class-I. After referring to various precedents, Hon'ble Supreme Court held as under:

"24. Reverting to the factual matrix of the present case, it is noticed that Sukhdeo had inherited ancestral property and was alive till 1965. The father of appellant, Saheblal, predeceased him in 1957. Saheblal was the son of Janakram. Janakram died in 1982. During the life time of Janakram, in terms of Section 6 of the 1956 Act, Saheblal could not have succeeded to the

property as he could claim only through Janakram. Janakram, however, was alive till 1982. If Saheblal himself had no claim in his own rights, the question of appellant, being his daughter, succeeding to the property does not arise.”

38. Thus, it was held clearly that during the lifetime of Janakram, in terms of Section 6 of Hindu Succession Act, Saheblal could not have succeeded to the property, as he could claim only through Janakram. It was also opined by Hon’ble Apex Court that if Saheblal himself had no claim in his own rights, the question of appellant Radha Bai, being his daughter, succeeding to the property does not arise.

39. It will be further important to reproduce further findings of Hon’ble Apex Court in ***Radha Bai Vs. Ram Narayan (supra)*** to highlight the principle of law with regard to succession. They read as follows:-

“25. The consistent view of this Court, including of three Judge Bench, is that the grand son or granddaughter is clearly excluded from heirs in Class-I. Saheblal himself was grandson of Sukhdeo, who predeceased Sukhdeo. After the demise of Sukhdeo in 1965, therefore, the ancestral suit property could be and came to be partitioned between Janakram and Pilaram in 1967. As a result of that partition, the suit property came to the exclusive share of Janakram in his individual capacity. He could, therefore, legitimately dispose of the same in the manner he desired and which he did in favour of his grandsons (defendant Nos. 1 to 3 respectively) vide registered sale deed dated 21st July, 1979. Neither the stated partition of 1967 nor the registered sale deed in favour of respondents (defendant Nos.1 to 3) dated 21" July, 1979 has been challenged. The relief sought in the suit as filed by the appellant/plaintiff is only for partition and awarding share to the appellant/plaintiff alongwith possession. Suffice it to observe that, the grand-daughter of Janakram (appellant herein) could not have claimed a higher right than the right of her father Saheblal.

26. Reliance placed by the appellant on the decision of this Court in ***Gurupad Khandappa Magdum Vs. Hirabai Khandappa Magdum and others (1978)3 SCC 383***, is inapposite. In that case, the plaintiff, being heir in Class-I, claimed to have share in the interest of her husband which he had at the time of his

death in the coparcenary property. In that view of the matter, In terms of proviso to Section 6 of the 1956 Act, the interest of her husband in the coparcenary property would devolve by succession under the 1956 Act. Similarly, in the case of **Smt. Raj Rani Vs. Chief Settlement Commissioner, Delhi and others (1984) 3 SCC 619**, the Court was called upon to consider the dispute between the widow, three sons and three daughters of the deceased who being heirs in Class-I had succeeded to interest in equal shares, as the property in question was Mitakshara coparcenary property, by virtue of Explanation-I of Section 6 of the 1956 Act. That analysis can be discerned from paragraph 17 of the reported judgment. Even the recent decision of this Court in **Ramesh Verma (Dead) Through Legal Representatives Vs. Lajesh Saxena (Dead) By Legal Representatives and another (2017)1 SCC 257**, does not take the matter any further for the appellant. Inasmuch as, even in that case, the dispute was between the concerned heirs in Class-I after the demise of Bhagwan Das. Before commencement of the 1956 Act, the notional partition had taken place and as per Section 82 of the Madhya Bharat Land Code, his sons and wife became entitled to get $\frac{1}{3}$ share in the property. On partition, share had fallen to one of the sons which became his separate property and no longer remained a Mitakshara property. This factual position could be discerned from paragraph 11 of the reported judgment.

27. A priori, we uphold the view taken by the High Court that after the death of Sukhdeo in 1965, the property devolved upon his two sons Janakram and Pilaram. They succeeded to the ancestral property equally. They later effected partition in 1967, as a result of which, the property came to the exclusive share of Janakram. The father of appellant, Saheblal, had predeceased his father Janakram and even his grandfather Sukhdeo. During the life time of Janakram, Saheblal could not have succeeded to the property and for the same reason, the appellant being his daughter cannot be heard to claim any right higher than that of Saheblal.”

40. Applying the legal position as explained by Hon’ble Supreme Court to the facts of the present case, it is clear that the plaintiffs being grand-children of Tej Pratap Singh are certainly excluded from the definition

of Class-I heirs, as at the time of death of Tej Pratap Singh, the mother of plaintiffs i.e., daughter Ravinder Kaur of Tej Pratap Singh was alive.

41. The contention of Ld. Senior counsel for the appellants - plaintiffs that the plaintiffs have approached the civil court after death of their mother Ravinder Kaur and so, they are amongst Class I legal heirs of Tej Pratap Singh and so, have *locus standi* to file the suit so as to challenge the Will, has no merit. As rightly noticed by the appellate that the succession of Tej Partap Singh (deceased) had already crystallized and the suit before the civil court was brought after a period of 43 years 11 months and 8 days from the time of death of Tej Partap Singh i.e. from 26.03.1971. Moreover, the mother of plaintiffs' was alive for a period of 42 years 4 months and 25 days after the death of Tej Partap Singh and therefore, the authority titled as ***Radha Bai Vs. Ram Narayan and others (supra)*** is applicable to the peculiar facts and circumstances of the present case, as the present plaintiffs cannot be heard to claim any right higher than that of Ravinder Kaur.

42. Proceeding further, plaintiffs have also given challenge to alleged oral Wills of their maternal grandmothers, namely, Sudarshan Kaur & Darshan Kaur, who had admittedly expired on 19.09.1983 & 24.01.2001 respectively.

43. Section 15 of the Hindu Succession Act provides for general rules of succession in case of Hindu females. It reads as under: -

15. General rules of succession in the case of female Hindus.—(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,—

(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;

(b) secondly, upon the heirs of the husband;

(c) thirdly, upon the mother and father;

(d) fourthly, upon the heirs of the father; and

(e) lastly, upon the heirs of the mother.

2) Notwithstanding anything contained in sub-section (1),—

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred in sub-section (1) in the order specified therein, but upon the heirs of the father; and

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.”

44. Again the bare perusal of the aforesaid provision would reveal that when a female dies intestate, the property devolves firstly upon her sons and daughters and husband and children of any predeceased son or daughter. It is apparent that daughter or son of a living daughter are not included in the first category of legal heirs of the deceased female.

45. As such, none of the plaintiffs can claim natural succession in the estate left behind by Darshan Kaur or Sudarshan Kaur, as mother of plaintiffs i.e., Ravinder Kaur, the daughter of Darshan Kaur was alive, when Darshan Kaur died. Similarly, Jasjeet Kaur was alive, when Darshan Kaur expired.

46. For all the reasons, as have been discussed earlier, it is rightly held by courts below plaintiffs have no right to challenge any Will of Sudarshan Kaur or Darshan Kaur. There is nothing in the plaint to suggest that Ravinder Kaur or Jasjeet Kaur ever challenged the Wills after the death of Darshan Kaur and Sudarshan Kaur. As such, the plaintiffs claiming through their mother Ravinder Kaur, have no right to challenge those Wills now in 2015.

47. In ***Ram Singh Vs. Gram Panchayat Mehal Kalan (1986) 4 SCC 364***, Hon’ble Apex Court has observed and held that when the suit is barred

by any law, the plaintiff cannot be allowed to circumvent that provision by means of clever drafting so as to avoid mention of those circumstances, by which the suit is barred by law of limitation.

48. Apart from the Wills as stated above, plaintiffs have also challenged the numerous transactions as mentioned in para No.15 and 20 of the plaint. As the details would reveal, as many as 26 transactions either by way of sale/mutations, gift, dattarband, Court decree etc. have been challenged. All these transactions pertain to the property, which was owned either by Tej Partap Singh, or Darshan Kaur or by Sudarshan Kaur and for all the reasons as have been discussed earlier, it is held that plaintiffs have no right to challenge those transactions. Tej Partap Singh, Darshan Kaur and Sudarshan Kaur being owners of their property in their own rights, in case they had transferred the property during their life time, plaintiffs have no locus to give challenge to them, as mother of plaintiffs i.e., Ravinder Kaur never assailed the same.

49. In view of the factual and legal position as discussed above, this court finds that the averments in the plaint read as a whole clearly indicate that an illusory cause of action has been created to challenge the Wills and various transactions as mentioned in Para 15 & 20 of the plaint. As such, this Court has no hesitation to uphold the findings of the Court below to the effect that plaintiffs did not have the locus standi or cause of action to challenge the Wills in question of Tej Partap Singh; or that of Darshan Kaur or Sudarshan Kaur or the transactions as mentioned in Para 15 & 20 of the plaint.

Ground of Bar of Limitation:

50. Apart from above, it is important to notice that out of 26 transactions as mentioned in para No.20 of the plaint, most of them came in existence during 1971 to 1980. Even the other transactions took place up to the year 2005 i.e. much-much before the 2015, when the present suit has been filed.

51. Apparently, the challenge to all these transactions is absolutely beyond limitation. Plaintiffs cannot be allowed to create an illusion of cause of action to contend that she came to know about those transactions only when she went to get the mutation sanctioned after the death of her mother in 2013 or 2014. Such an illusion tried to be created by the plaintiffs is nothing but an attempt to create a smokescreen before the Court.

52. The contentions of Ld. Senior counsel for the plaintiffs-appellants to the effect that plaint under Order VII Rule 11 (d) of CPC cannot be rejected on the ground of bar of limitation without framing issues or taking evidence, as the plea of limitation is a mixed question of law and fact, is without any merit. The reliance placed upon ***Vaish Aggarwal Panchayat Vs. Inder Kumar and others, 2015(4) RCR (Civil) 167 (SC)*** and ***Mohinder Singh Vs. Shangara Singh, 2007(1) PLR 475 (P&H)***, wherein it was observed that there is no limitation period for filing suit for declaration based on title, is misplaced, as it has been found that plaintiffs cannot claim title to the suit property on the basis of inheritance directly from Tej Partap Singh or from Darshan Kaur or Sudarshan Kaur. Plaintiffs could claim title on the basis of natural succession in the property of their mother Ravinder Kaur, only after the death of said Ravinder Kaur. They cannot claim the property, which their mother Ravinder Kaur got from her father i.e. Tej Partap Singh or mother Darshan Kaur.

53. As has already been noticed that Ravinder Kaur, despite remaining alive for more than 42 years after the death of her father Tej Partap Singh, never challenged either the Will of Tej Partap Singh or any of the transactions, which were executed by him either in favour of Darshan Kaur or Sudarshan Kaur or in favour of defendants No.1 to 9. In fact, this court is convinced with the findings of the Courts below to the effect that a fictitious cause of action has been attempted to be created by the plaintiffs so as to bring the suit within limitation, which cannot stand the test of settled principles of law.

54. In ***Shakti Bhog Food Industries Ltd. v. Central Bank Of India,***

(2020) 17 Supreme Court Cases 260, Hon'ble Supreme Court held as under:

“7. Indeed, Order VII Rule 11 of the CPC gives ample power to the Court to reject the plaint, if from the averments in the plaint, it is evident that the suit is barred by any law including the law of limitation. This position is no more res integra.”

55. In the case of **Ram Singh Vs. Gram Panchayat Mehal Kalan, (1986) 4 SCC 364**, Hon'ble Supreme Court observed and held that when the suit is barred by any law, the plaintiff cannot be allowed to circumvent that provision by means of clever drafting so as to avoid mention of those circumstances, by which the suit is barred by law of limitation.

56. In **Raj Narain Sarin (Dead) Through LRs and others v. Laxmi Devi and others**, (2002) 10 Supreme Court Cases 501, Hon'ble Supreme Court observed held as under:

“8.....The litigation, in our view, cannot but be termed to be utterly vexatious and abuse of the process of court, more so by reason to the fact that the deed of sale being executed as early as 1941 stands unassailed for a period of over 50 years. The decision of this Court in **T. Arivandandam** has its due application and having regard to the decision as noticed above and upon consideration of the relevant provisions as engrafted in the Code itself, we have no hesitation in accepting the order of the learned Additional District Judge. The High Court obviously fell into a manifest error and as such this appeal is allowed. The order of the High Court stands set aside. The order of the learned Additional District Judge stands restored. No order as to costs.”

57. In **Jang Bahadur and others v. Bhagirathi, (2006) 2 RCR (Civil) 145**, this court observed and held as under:

“10. At the outset, may be carefully stated that the trial Court had rightly held the suit as time-barred. It was basically a declaratory suit, which could be filed within three years from the date of accrual of cause which, in this case, was the date of passing of decree and that of execution of the will viz. 30.5.1972 and 30.8.1974 respectively. But the suit was filed on 27.4.1981 i.e. long after three years from accrual of cause of action and was, therefore,

time-barred.”

58. Applying the legal position as above to the facts of the present case, this court is of the opinion that the plaint has been rightly rejected in exercise of powers under Order VII Rule XI(a) and (d) of CPC being vexatious, illusory cause of action and barred by limitation. By clever drafting, the plaintiffs have tried to circumvent the provision of limitation act and have tried to maintain the suit, which is nothing but abuse of process of court and the law.

Ground of suit being barred due to non-joinder of necessary parties:

59. Apart from the fact that the suit is clearly barred by time so as to challenge the Wills as well as the numerous transactions as assailed in the plaint, it is further important to notice that suit is also bad for non-joinder of necessary parties. Numerous transferees/vendees as well as some of the vendors of the transactions as mentioned in para No.20 of the plaint are not a party to the suit. Order I Rule 9 CPC is relevant here, which reads as under: -

“Misjoinder and non-joinder.—No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it:

Provided that nothing in this rule shall apply to non-joinder of a necessary party.”

60. Reading of the above Rule makes it clear that as a general principle, a suit cannot be defeated by the reason of mis-joinder or the non-joinder of the necessary parties and that Court may decide the controversy in question so far as the rights and the interest of the parties actually before it, are concerned. However, this general principle is not applicable, when it is a case of non-joinder of such a necessary party, in whose absence the controversy cannot be decided and the main relief claimed in the suit cannot be granted.

61. Reliance can be placed on ***Moreshar Yadaorao Mahajan Versus Vyankatesh Sitaram Bhedi 2022 SCC OnLine SC 1307***. In that case, suit

property was jointly owned by the defendant, his wife and three sons. Defendant entered into agreement to sell with the plaintiff. Suit for specific performance filed by plaintiff was decreed by the trial court. The appellate court affirmed it. Bombay High Court, in the appeal filed by defendant, set aside the judgments of courts below and declined relief of specific performance, as it was found that suit was bad for non-joinder of necessary parties. Plaintiff approached Apex Court. Dismissing the appeal, it was observed by Hon'ble Supreme Court as under:

“17. This Court, in the case of ***Mumbai International Airport Private Limited (2010) 7 SCC 417***, has observed thus:

“15. A “necessary party” is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a “necessary party” is not impleaded, the suit itself is liable to be dismissed. A “proper party” is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance.”

18. It could thus be seen that a “necessary party” is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. It has been held that if a “necessary party” is not impleaded, the suit itself is liable to be dismissed.

19. As already discussed hereinabove, the plaintiff himself has admitted in the plaint that the suit property is jointly owned by the defendant, his wife and three sons. A specific objection was also taken by the defendant in his written statement with regard to non-joinder of necessary parties. Since the suit property was jointly owned by the defendant along with his wife and three sons, an effective decree could not have been passed affecting the

rights of the defendant's wife and three sons without impleading them. Even in spite of the defendant taking an objection in that regard, the plaintiff has chosen not to implead the defendant's wife and three sons as party defendants. Insofar as the reliance placed by Shri Chitnis on the judgment of this Court in the case of *Kasturi (supra)* is concerned, the question therein was as to whether a person who claims independent title and possession adversely to the title of a vendor could be a necessary party or not. In this context, this Court held thus:

“7.From the above, it is now clear that two tests are to be satisfied for determining the question who is a necessary party. Tests are” (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings; (2) no effective decree can be passed in the absence of such party.”

20. It can thus be seen that what has been held by this Court is that for being a necessary party, the twin test has to be satisfied. The first one is that there must be a right to some relief against such party in respect of the controversies involved in the proceedings. The second one is that no effective decree can be passed in the absence of such a party.

21. In view of the plaintiff's own admission that the suit property was jointly owned by the defendant, his wife and three sons, no effective decree could have been passed in their absence.

22. In that view of the matter, we find that no error can be noticed in the judgment of the High Court. The appeals are therefore liable to be dismissed.”

62. In the present case, numerous transferees/vendees as well as some of the vendors of the transactions as mentioned in para No.20 of the plaint a having not been impleaded as party to the suit, none of those transactions can be assailed in their absence and so, no relief whatsoever qua those transactions can be considered. In these circumstances, this Court has no hesitation to conclude that suit is also bad for non-joinder of necessary parties and on this ground alone, the plaint was liable to be rejected.

Court Fee:

63. Lastly, in considered opinion of this court, the first Appellate Court has committed error in coming to the conclusion that plaintiffs were not liable to pay the *ad valorem* Court fee, by upsetting the finding of the Trial Court in this regard. Trial Court was correct in coming to the conclusion that plaintiffs were liable to pay the *ad valorem* Court fee, at least on the transactions assailed by them as mentioned in Para N: 20 of the plaint.

64. The reason is that plaintiffs challenged numerous transactions either by way of sale, gift, Court decree etc. as referred in para No.20 of the plaint. These are 26 in numbers, which came into existence during 1971 to 2005. It is not the case of the plaintiff that all those properties, which have been transacted through those transactions as mentioned in para no.20 of the plaint, are in possession of the contesting defendants and such, plaintiffs obviously cannot claim the joint possession with them on the basis that they are also the Class-I legal heirs. It has already been noticed that plaintiffs are not amongst the Class-I legal heirs either of Tej Partap Singh or that of Darshan Kaur or Sudarshan Kaur.

65. To support his contentions regarding liability of the plaintiffs for payment of ad valorem court fee, Ld. Senior counsel for contesting respondents has referred to decisions of Hon'ble Supreme Court rendered in ***Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others, 2010 AIR (Supreme Court) 2807, Bharat Bhushan Gupta Vs. Pratapp Narain Verma and another, 2022 LiveLaw (SC) 552*** and a decision of this High Court rendered in ***Tarsem Singh and others Vs. Vinod Kumar and others, 2011 (31) RCR (Civil) 709.***

66. In ***Tarsem Singh and others (supra)***, Hon'ble Division Bench of this Court explained the ratio of law by Hon'ble Supreme Court in ***Suhrid Singh @ Sardool Singh (Supra)***, as under -

“i) If the executant of a document wants a deed to be annulled, he is to seek cancellation of the deed and to pay ad valorem Court fee on the consideration stated in the said sale deed.

ii) But if a non-executant seeks annulment of deed i.e. when he is not party to the document, he is to seek a declaration that the deed is invalid, non-est, illegal or that it is not binding upon him. In that eventuality, he is to pay the fixed Court fee as per Article 17(iii) of the Second Schedule of the Act.

iii) But if the non-executant is not in possession and he seeks not only a declaration that the sale deed is invalid, but also a consequential relief of possession, he is to pay the ad-valorem Court fee as provided under Section 7(iv)(c) of the Act and such valuation in case of immovable property shall not be less than the value of the property as calculated in the manner provided for by Clause (v) of Section 7 of the Act.

In view of the aforesaid judgment of the Hon'ble Supreme Court, the issue leading to payment of the Court fee is decided in terms of the parameters laid down above."

67. In ***Bharat Bhushan Gupta case (Supra)***, it has been held by Hon'ble Supreme Court as under: -

"9.1. It remains trite that it is the nature of relief claimed in the plaint which is decisive of the question of suit valuation. As a necessary corollary, the market value does not become decisive of suit valuation merely because an immovable property is the subject-matter of litigation. The market value of the immovable property involved in the litigation might have its relevance depending on the nature of relief claimed but, ultimately, the valuation of any particular suit has to be decided primarily with reference to the relief/reliefs claimed."

68. It is, thus, clear that although simply because immovable property is the subject matter of litigation that in itself is not decisive for valuation of the suit but the market value of the property as involved in the litigation, has relevance, depending upon the nature of the claimed relief and the valuation of the suit is to be decided primarily with reference to the claimed relief

69. Further, the Court can go behind the plaint to find out the real nature of the relief claimed and the liability to pay the Court fee in order to

see that plaintiff has not disguised the relief so as to avoid the payment of Court fee, as has been held in ***Robust Tyre and Rubber Company (P) Ltd. Vs. State Bank of India and others 1987 (2) PLR 394*** and ***Shanti Dhawan Vs. S.M. Khan, 2011 (2) CCC 62 P&H.***

70. In present case, no doubt that plaintiffs are not the executants of any of the assailed transactions as mentioned in para No.20 of the plaint, but the plaintiffs are seeking declaration to declare all of them as null and void. Plaintiffs are claiming joint possession to those properties along with contesting defendants. Had the contesting defendants been in possession of those properties, which have already been transacted by way of the assailed transactions mentioned in para No.20 of the plaint, the position would have been different, as it could be contended that the contesting defendants being already in possession, plaintiffs were merely seeking joint possession. However, plaintiffs want that they along with contesting defendants be declared it to be in joint possession of those properties, which have already been sold or transferred or in any other manner disposed of in favour of some third parties, who are not even parties to the present suit.

71. In the above facts and circumstances, the plaintiffs are liable to pay the *ad valorem* Court fee.

72. However this finding is not going to affect in any manner the fate of present appeal, because the suit itself has been found to be not maintainable on account of the fact that plaintiffs have neither any locus standi nor any cause of action to file the suit and even otherwise, the suit has been found to be barred by limitation.

Conclusion:

73. On account of the entire discussion as above, this Court upholds the findings of the Courts below rejecting the plaint and by accepting the application of the contesting defendants under Order VII Rule 11 CPC.

74. Consequently, holding the present appeal to be devoid of any merit, the same is hereby dismissed.

14.10.2024
Vivek Pahwa

(DEEPAK GUPTA)
JUDGE

	<i>Whether speaking/reasoned?</i>	<i>Yes/No</i>
	<i>Whether reportable?</i>	<i>Yes/No</i>