

**In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side**

**The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Uday Kumar**

**F.A. No.38 of 2025
with
CAN 4 of 2023**

**Dr. (Smt.) Rajyashree Chamarla and Others
Vs.
Dr.Bidyapati Chatterjee**

For the appellants	:	Mr. Rishabh Karnani, Mr. Anurag Bagaria, Mr. Devansh Sonthalia
For the respondent	:	Mr. Probal Mukherjee, Ld. Sr. Adv., Mr. Ujjal Roy, Mr. Abdur Rahim, Mr. Ivan Roy
Hearing concluded on	:	13.01.2025
Judgment on	:	16.01.2025

Sabyasachi Bhattacharyya, J.:-

1. The present appeal has been preferred by the plaintiff in a suit seeking a decree for partition upon declaration that the plaintiffs are jointly entitled to 50 per cent share of the suit properties, a decree declaring that the defendant never acquired right, title and interest in the entire suit properties on the basis of the Deed of Family Settlement dated December 24, 1997 and for other ancillary reliefs. By the impugned

deemed decree, the plaint was rejected under Order VII Rule 11(d) of the Code of Civil Procedure only on the ground of limitation.

- 2.** Learned counsel appearing for the appellant contends that in Paragraph No.23 of the plaint, the cause of action has been pleaded to be the refusal, in the month of March, 2010, of the plaintiffs' claim of 50 per cent of the rent of the first floor of "Gayaram Building", tenanted to the Life Insurance Corporation of India, and rent of ground floor room of "Ramapada Bhawan", tenanted to Silver Arts, which were being collected by the defendants from the said tenants. The suit was filed in October, 2010, that is, within the limitation period of three years as contemplated under Article 59 of Part III of the Schedule to the Limitation Act, 1963.
- 3.** It is further argued that the plaint does not specifically plead the plaintiffs' date of knowledge of the Deed of Family Settlement dated December 24, 1997 and, as such, the learned Trial Judge could not have rejected the plaint at the outset. The question of limitation, at best, is a mixed question of fact and law and there being nothing on the face of the plaint to show that the suit was barred by limitation, the impugned judgment and decree ought to be set aside.
- 4.** Learned counsel for the appellant further argues that the plaintiff does not challenge the said Deed of Family Settlement as such but merely seeks a declaration that the defendant never acquired right, title and interest in the suit properties on the basis of the same. As such, it cannot be said that the suit is palpably barred by limitation.

5. Learned counsel for the appellant cites an unreported judgment of the Supreme Court in the matter of *Daliben Valjibhai & Ors. v. Prajapati Kodarbhai Kachrabhai & Anr.*, where it was held that the question therein was whether the plaintiffs had knowledge of execution of the sale deed. It was reiterated that under Article 59 of the Limitation Act, the suit can be instituted within three years of the date of knowledge.
6. Learned senior counsel appearing for the defendant/respondent argues that the limitation for filing a suit for cancellation of a deed starts to run from the date of execution of the deed, particularly if the same is registered. Under Section 3 of the Transfer of Property Act, registration of a deed of transfer operates as notice of such transfer. As such, the date of knowledge of such a deed is to be imputed on the plaintiffs from the date of such registration. In support of such contention, learned senior counsel cites *Raghwendra Sharan Singh v. Ram Prasanna Singh (Dead) by Legal Representatives*, reported at (2020) 16 SCC 601, where the Supreme Court held that the plaintiff therein had never prayed for any declaration to set aside the gift deed. The Supreme Court observed that the same was done cleverly since if such a prayer would have been asked, the suit could be said to be clearly barred by limitation considering Article 59 of the Limitation Act.
7. Similarly, in the present case, it is argued that cancellation of the Deed of Family Settlement dated December 24, 1997 has not been specifically sought, since if so done, the same would render the suit palpably barred by limitation.

8. Learned senior counsel next cites *Dahiben v. Arvinbhai Kalyanji Bhanusali (Gajra) dead through Legal Representatives and Others*, reported at (2020) 7 SCC 366, where the Supreme Court observed that in *Raghwendra Sharan Singh (supra)*, the court had held that the suit would be barred by limitation under Article 59 of the Limitation Act if it was filed beyond three years of the execution of the registered deed.
9. It is further argued that Schedule “C” of the plaint in the present suit apparently was a part of Schedule “B”, which was the subject-matter of the concerned deed dated December 24, 1997.
10. Learned counsel for the appellant, in rejoinder, points out that at least the Schedule-“C” property was retained as a joint property by a previous deed dated 1993, through which both sides derive title. As such, the suit would, in any event, be maintainable with regard to partition of the said Schedule “C” property. It being well-settled that there cannot be a partial rejection of the plaint, the Trial Court erred in law in rejecting the plaint.
11. Upon a careful consideration of the materials on record, we find that Schedule “C” is independent of Schedule “B”. For the purpose of adjudicating an application under Order VII Rule 11 of the Code of Civil Procedure, the court is to proceed on the premise that the pleadings in the plaint are sacrosanct. At best, the documents referred to in the plaint and annexed thereto or filed therewith can be looked into for the purpose of ascertaining whether the plaint is barred by any law.
12. As per the pleadings of the plaint in Paragraph Nos.13 and 14 thereof, by virtue of a deed of partition bearing no.4335 for the year 1993, Dr.

Kshirode Nath Chatterjee, the original owner of the parties, partitioned the entire property between Smt. Sephali Chatterjee, Sri Deepak Kumar Chatterjee and Dr. Bidyapati Chatterjee.

13. Smt. Sephali Chatterjee was allotted the property enumerated in Schedule "B" of the suit property, which includes 1/3rd share in the vacant space of 2½ kathas, which comprises the Schedule "C" property. In Paragraph No.14 of the plaint, it has been categorically stated that Smt. Sephali Chatterjee, Sri Deepak Kumar Chatterjee and Dr. Bidyapati Chatterjee remained the joint owners of the land measuring 2½ kathas described in Schedule "C" of the plaint.
14. Thus, since partition has been sought in respect of both Schedules "B" and "C" and Schedule "C" was kept joint between the parties/their predecessors even as per the plaint averments, in any event, the suit for partition is maintainable in respect of Schedule "C", as the same was not the subject-matter of the 1997 deed. Since it is well-settled that there cannot be any partial rejection of plaint, the impugned rejection of plaint is bad in law on such count alone.
15. Moving on to the next issue, a composite reading of the plaint, in particular Paragraph Nos.16 and 17 thereof, shows that Smt. Sephali Chatterjee, the settlor, executed a Deed Of Family Settlement on December 24, 1997 which was subsequently registered in 1998.
16. Paragraph No.17 of the plaint delineates the subject-property of the said family settlement. The case run by the plaintiff in Paragraph Nos.18 and 19 is that Smt. Sephali Chatterjee died in the year 2002, leaving behind two sons namely Sri Deepak Kumar Chatterjee and Dr.

Bidyapati Chatterjee as her only legal heirs and successors. Whereas the plaintiffs claim through Deepak, Bidyapati is the defendant/respondent in the present litigation.

- 17.** In Paragraph No.19 of the plaint, it is alleged that upon the demise of Smt. Sephali Chatterjee, the so-called deed of trust came to an end and the defendant never acquired any right, title or interest in entire Schedule "B" properties on the basis thereof.
- 18.** The crucial paragraph in the plaint is Paragraph No.20, which states that following the demise of Smt. Sephali Chatterjee (the settlor), Deepak claimed 50 per cent share of the rents being collected from the tenants in respect of Schedule "B" property and the defendant, after collecting such rents, used to pay 50 per cent thereof to Deepak. Hence, going by the averments of the plaint, in particular Paragraph No.20 thereof, both parties proceeded on the premise that the Deed of Family Settlement of the year 1997 came to an end with the demise of the settlor Smt. Sephai Chatterjee and was not given effect to thereafter, since 50 per cent of the rent collected from the Schedule "B" property, which was the subject-matter of the said deed, was paid to the predecessor-in-interest of the plaintiffs/appellants by the defendant/respondent. As such, as per the plaint pleadings, no cause of action arose at the juncture when the Deed of Family Settlement was executed or registered and even thereafter, upon the demise of the settlor Smt. Sephali Chatterjee. As per the plaint case, till the death of Deepak on January 11, 2010, the equal share of Deepak and his brother, the defendant, was acknowledged by both sides by payment of

50 per cent rent by the defendants to the plaintiffs' predecessor-in-interest.

- 19.** The question, as to whether such payment of Deepak's share of the rent tantamounted to admission on the part of the defendants that the 1997 deed was not given effect to, may indeed be arguable and, thus, required to be decided on merits in the suit on a full-fledged trial upon adduction of evidence. However, at the stage of deciding an application under Order VII Rule 11 of the Code of Civil Procedure, the Court has to go by the plaint averments only. Hence, it would be premature to shut out the plaintiffs at this stage on the ground of limitation on the apprehension of such defence being taken by the defendant.
- 20.** As per Paragraph No.23 of the plaint, only after the death of Deepak, when the plaintiffs approached the defendants in the month of March, 2010 for getting their 50 per cent of the rent, the defendant refused to give the same and first asserted his rights on the strength of the Deed of Family Settlement dated December 24, 1997. The suit was filed within a few months thereafter.
- 21.** Hence, as per the plaint case, no cause of action for disputing or seeking a declaration regarding the Deed of Family Settlement arose either at the time of its execution or subsequently after the demise of the settlor, Smt. Sephali Chatterjee. During the life-time of Deepak, the predecessor-in-interest of the plaintiffs, the equal share of the parties in the "B" Scheduled property, which was the subject-matter of the Deed of Family Settlement was honoured by the parties as per the plaint.

- 22.** Only upon the demise of Deepak in 2010, the defendant first refuted such share of the plaintiffs and asserted his title on the basis of the 1997 deed.
- 23.** Hence, going by the plaint, the cause of action for seeking a declaration regarding the 1997 deed arose only in the month of March, 2010 and not before.
- 24.** Article 59 of the Schedule provides that in a suit to cancel or set aside an instrument or decree or for the rescission of a contract, the limitation period of three years begins to run “when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded *first became known to the plaintiffs*”.
- 25.** In the present case, as per the plaint, the facts entitling the plaintiffs to have the 1997 deed cancelled or avoided first became known to them in the month of March, 2010, when the defendant first asserted his title on the strength of the said deed and refused to honour the co-sharership of the plaintiffs with the defendant in respect of the property which was the subject-matter of the 1997 deed. Hence, the limitation, if at all, started to run from March, 2010 and the suit has been filed well within limitation.
- 26.** In *Daliben Valjibhai (supra)* relied on by the appellant, the Supreme Court categorically observed that the limitation period for challenging a deed starts running from the date of knowledge.
- 27.** However, in *Raghwendra Sharan Singh (supra)*, the Supreme Court had not specifically observed that the limitation period for challenging a deed starts to run from its execution. As such, the said judgment

cannot be construed to be binding precedent on the issue, as the *ratio decidendi* thereof did not deal with the commencement of limitation period for such a suit.

- 28.** The Supreme Court, in Paragraph No.8 of the said judgment, observed that the prayer for declaration, to set aside the gift deed in the said case, was not asked cleverly to avoid limitation.
- 29.** However, in the present case, there is no question of the suit being barred by limitation as per the plaint averments and, as such, the clever drafting principle does not apply at all.
- 30.** In *Dahiben (supra)*, the Supreme Court, in a stray sentence, recorded that in *Raghuwendra Sharan Singh (supra)*, it had been held that the suit would be barred by limitation under Article 59 of the Limitation Act if it was filed beyond three years of the execution of the registered deed.
- 31.** With utmost respect, however, the said stray observation was not an adjudication on any proposition of law and/or a part of the reasoning on any issue. The difference between *ratio decidendi* and *obiter dictum*, roughly, is whereas the former is the reasoning or formulation of a legal principle on an issue which is required to be adjudicated for arriving at a decision in the case, the latter is a similar expression, but on an issue which is not required to be adjudicated upon to arrive at a decision in the case. In *Dahiben (supra)*, neither of the two apply, since the Supreme Court merely recorded an observation as to what had purportedly been held in an earlier decision, without formulating any principle or attributing any reason. Hence, the said observation was not

even an *obiter dictum*, let alone being the *ratio decidendi* of the said case, and thus is not a binding precedent on the said question.

32. In any event, the Supreme Court in *Daliben Valjibhai (supra)* had relied on its two previous judgments, one *P.V. Guru Raj Reddy v. P. Neeradha Reddy*, reported at (2015) 8 SCC 331 and *Chhotanben v. Kirtibhai Jalkrushnabhai Thakkar*, reported at (2018) 6 SCC 422, one of which was rendered by a Three-Judge Bench of the Supreme Court, which is of larger strength than that delivering the judgment in *Dahiben (supra)* as well as *Raghwendra Sharan Singh (supra)*.
33. Seen in such context, we cannot but rely on the clear language of Article 59 of the Limitation Act. Applying the same to the averments made in the plaint in the instant case, there cannot be any doubt that the suit was instituted well within limitation even if a declaration was sought in respect of the 1997 Deed of Family Settlement.
34. Moreover, as discussed earlier, in any event, Schedule “C” remained joint as per the plaint averments. Only 1/3rd undivided share therein devolved upon Smt. Sephali Chatterjee, the settlor of the year 1997 deed. The joint character of the said Schedule “C” property entitles the parties at least to seek declaration of their undivided share therein, independent of any declaration regarding the 1997 deed, since the subject-matter of the said deed was only the Schedule “B” property in the suit and not the Schedule “C” property. Thus, the prayer in the plaint seeking declaration of the plaintiffs’ share regarding the property covered by Schedule “C” would independently survive even if the declaration regarding the 1997 deed were to be held to be barred by

limitation. Thus, the plaint could not have been rejected as a whole in any event.

- 35.** In view of the above discussions, there cannot be any doubt that the learned Trial Judge erred in law in misconstruing the averments in the plaint and erroneously applying the law governing the field by rejecting the plaint at the outset without permitting the parties to adduce evidence and deciding the issues involved on a full-fledged trial.
- 36.** Accordingly, F.A. No.38 of 2025 is allowed on contest, thereby setting aside the judgment and decree (deemed) dated February 6, 2012 passed by the learned Civil Judge (Senior Division), District: Darjeeling in Title Suit (Partition) No.140 of 2010. The suit is remanded to the Trial Court for being adjudicated on merits on all issues upon a full-fledged trial. It will be open to the learned Trial Judge to frame issues in terms of the pleadings of the parties, including the issue of limitation.
- 37.** In view of the long pendency of the litigation, it is expected that the learned Trial Judge shall endeavour to dispose of the suit at the earliest, preferably within two years from the date of communication of this decision of the said court.
- 38.** There will be no order as to costs.
- 39.** A formal decree be drawn up accordingly.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)