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

1. **RSA-1599-1995 (O&M)**
Reserved on :-03.11.2025
Date of Pronouncement:-21.11.2025
Uploaded on:-21.11.2025

Jaswant Singh (Since Deceased) through his LRs and others

… Appellants

Versus

Mohinder Singh (Since Deceased) through his LRs and others

…Respondents

2. RSA-4281-2004 (O&M)

Lakhwinder Kaur and others

…Appellant

Versus

Mohinder Singh and others

…Respondents

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CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by :-

Mr. R.S. Mamli, Advocate, with
Mr. Ravi Rana, Advocate, for
the appellant(s) in **RSA-1599-1995**.

Mr. Rajinder Goel, Advocate,
for the appellant in **RSA-4281-2004**.

Mr. Adarsh Jain, Senior Advocate, with
Ms. Amandeep Kaur, Advocate, for
the respondents in **RSA-1599-1995**.

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VIRINDER AGGARWAL, J.

1. Through this unified and consolidated judgment, this Court undertakes the adjudication of both Regular Second Appeals (for short here-in-after to be referred to as "RSAs"), each arising from an identical factual substratum and presenting interrelated as well as overlapping questions of law. Given the commonality of legal issues and the substantial convergence in the factual matrix, a joint consideration of these appeals is not only appropriate but also imperative to avoid redundant analysis.

1.2. The consolidation of these matters serve the dual purpose of preventing unnecessary repetition and advancing the principles of judicial economy. It further ensures coherence in legal reasoning and consistency in the ultimate determination. By adopting this streamlined approach, the Court aims to facilitate the expeditious administration of justice while rendering a comprehensive, logically structured, and legally sustainable adjudication of all issues involved.

1.3. In the interest of analytical clarity and to ensure a methodical adjudication of the matters in issue, the factual matrix relevant to each RSA shall be articulated and '**examined independently**'. Such compartmentalized presentation of facts is intended to eliminate any potential ambiguity arising from consolidation, thereby enabling a more precise appreciation of the distinct controversies involved. This structured approach shall ultimately aid the Court in rendering a comprehensive, coherent, and legally sustainable determination, culminating in a just, equitable, and well-reasoned consolidated judgment.

RSA-1599-1995 (O&M)

2. The appellants-plaintiffs have instituted the present RSA challenging the findings recorded by the learned Sub-Judge Ist Class, Kurukshetra vide judgment dated 16.10.1992 which was partly decreed, and modified by the learned Additional District Judge, Kurukshetra vide judgment dated 30.05.1995, whereby the suit for possession and injunction filed by the appellants–plaintiffs was dismissed.

3. An abridged statement of the essential facts of the civil suit was that the plaintiffs seek possession of 146 Kanals 14 Marlas, asserting that Buta Singh (defendant No.15) executed a registered General Power of Attorney in favour of Darshan Singh (defendant No.16) on 22.12.1966, pursuant to which a sale deed dated 28.03.1967 was executed in favour of defendants No.7 to 9. These vendees subsequently sold the land to the plaintiffs on 21.12.1967, whereafter mutation was entered on 16.07.1970 and sanctioned on 12.08.1970. As the Patwari did not return the originals, certified copies have been produced. The plaintiffs contend that later sale deeds executed by defendant No.15 are ineffective against their prior rights. They further aver that defendants No.10 to 14 were lessees under Utilization Schemes, preventing earlier delivery of possession, now sought through this suit.

4. During the proceedings, defendant No.1 expired, and his legal representatives were impleaded as defendants No.17 to 20. Notice of the suit was issued to all defendants. As none appeared for defendants No.7 to 16, they were proceeded against *ex-parte*. Defendants No.2 to 6 and 17 to 20 filed a written statement dated 09.01.1990, raising preliminary objections that the plaintiffs lack locus standi; the suit is not maintainable; it is time-

barred; the plaintiffs are estopped by their conduct; and no cause of action exists.

4.1. On merits, they denied execution of any General Power of Attorney by defendant No.15 in favour of defendant No.16, rendering the alleged sale deed void. They maintain that they lawfully purchased the land under sale deeds detailed in paragraphs 6 to 13 of the plaint and are in rightful possession, warranting dismissal of the suit.

5. The appellants–plaintiffs filed a replication, specifically traversing the assertions set forth in the written statement and reaffirming the pleadings contained in the plaint. Upon a comprehensive examination of the pleadings and the rival contentions raised by the parties, the Court was pleased to frame the following issues for adjudication, so as to facilitate a precise, orderly, and legally coherent determination of the matters in controversy:-

1. Whether Buta Singh executed power of attorney in favour of defendant No. 16? If so to what effect? OPP.
2. Whether the sale deed dated 28.3.1967 and 21.12.1967 have been executed earlier? If so, to what effect?OPP.
3. Whether Buta Singh had no right to execute the sale deeds after 21.12.1967, If he did so, to what effect?OPP.
4. Whether the collusive decree dated 11.1.1978 has no effect on the rights of the plaintiffs? OPP.
5. Whether defendants No. 10 to 14 were lessees from 1955 to 1975 on the suit land? OPP.
6. Whether the defendants No.1 to 6 and 17 to 20 are tres-passers over the suit land and the plaintiffs are entitled for possession of the suit land? OPP.

7. Whether the plaintiffs have no locus standi-to file and maintain this suit? OPD.
8. Whether the suit is not maintainable? OPD.
9. Whether the defendants are bonafide purchasers for Value without notice? If so, its effect? OPD.
10. Whether the suit is time-barred? OPD.
11. Whether the plaintiffs are estopped by their own act and conduct from filing this suit? OPD.
12. Whether the plaintiffs have no cause of action? OPD.
13. Relief.

6. Both parties were afforded ample and adequate opportunity to lead evidence in support of their respective claims and defence. Upon the conclusion of the evidentiary proceedings and after hearing the learned counsel for the parties at considerable length, the learned Sub-Judge Ist Class, Kurukshetra partly decreed for possession of the suit with the following observation:-

> "*In view of the findings recorded on the issues above, the plaintiffs are held entitled to partial relief. Accordingly, the suit is decreed to the extent that a decree for possession of the suit land, to the extent of a 2/3rd share, is hereby passed in favour of the plaintiffs and against the defendants".*

6.1. The learned learned Additional District Judge, Kurukshtra , upon reappraisal of the record and submissions, likewise modified the learned trial's Courts judgment and dismissed the appeal with costs and observations are as under:-

> "*Counsel has relied on the Full Bench decision in **Aimer Singh v. Shamsher Singh, 1983 P.L.R. 786 (P&H)**, and no contrary authority has been cited by the appellants. The precedent is fully applicable to the*

> *present case. Accordingly, the Trial Court's judgment is modified to decree possession of the entire suit land in favour of the plaintiff. After possession is delivered, any non-impleaded co-sharers may seek partition of their respective shares. With this modification, the appeal stands dismissed with costs. Counsel's fee is assessed at ₹550/–."*

RSA-4281-2004 (O&M)

7. The appellants-defendants have instituted the present RSA challenging the findings recorded by the learned Civil Judge (Junior Division), Kurukshetra vide judgment dated 15.03.2001 which was decreed and the appeal preferred against the said judgment and decree was dismissed by the learned Additional District Judge, Kurukshetra vide judgment dated 30.08.2004, whereby the suit for mesne profit filed by the respondents/plaintiffs was decreed.

8. A distilled statement of the relevant facts are that respondents/plaintiffs have instituted the present suit for mesne profits, seeking recovery of ₹49,539.60/ from the defendants in respect of land measuring 146 Kanals 14 Marlas situated in Village Udarsi, Tehsil Thanesar, District Kurukshetra, for the period Kharif 1989 to Rabi 1992, as reflected in Jamabandi for the year 1989-90, and further for Kharif 1992 to Rabi 1993, on the basis of oral and documentary evidence. The plaintiffs, owners of 97 Kanals 16 Marlas (2/3 share) of the said land, secured a decree for possession in Civil Suit No.1457 of 1990 (Mohinder Singh etc. v. Gurdial Singh) vide judgment dated 16.10.1992 by Shri A.K. Suri, then SJIC, Kurukshetra. As the defendants remained in unauthorised possession during the relevant harvests, the plaintiffs claim mesne profits equivalent to 1/3 '*Batai*' as per prevailing tenancy law, amounting to ₹49,539.60/-, as

assessed by the Tehsildar, Thanesar. Despite repeated requests, the defendants failed to vacate the land or pay damages. Hence, the present suit valued at ₹49,539.60/-, with requisite court fee affixed.

9. Notice of the suit was duly issued, in pursuance to that, defendants No.1 to 7 and 10, despite service, failed to appear and were accordingly proceeded against ex parte. Defendants No.8 and 9 being minors, and their natural guardian Joginder Kaur having also failed to appear, Shri Vijay Singh, Advocate, was appointed as Court Guardian to safeguard their interests.

9.1. Defendants No.11 to 13 filed a written statement denying the plaintiffs' claims and raising preliminary objections that the suit is not maintainable; the plaintiffs lack *locus standi*; the suit is barred by estoppel; and it suffers from non-joinder of necessary parties. On merits, they asserted that the plaintiffs are not owners, that the earlier decree dated 16.10.1992 is under appeal, and that defendants, as owners in possession, are not liable for mesne profits. They sought dismissal of the suit with costs.

10. The respondents–plaintiffs filed a replication, expressly denying the averments made in the written statement and reiterating the pleadings of the plaint. Upon consideration of the pleadings and the rival contentions of the parties, the Court framed the following issues for adjudication to ensure a precise and orderly determination of the matters in dispute:-

1. Whether plaintiffs are owner of suit land? OPP
2. Whether defendants are in possession of the suit land as tenant?OPP
3. Whether defendants have failed to make or payment of 1/3rd batai, produce rent?OPP

4. Whether plaintiffs are entitled to mesne profits ₹49,530.60/- paise at the rate of 1/3rd or produce?OPP

5. Whether suit is not maintainable in the present form?OPD

6. Whether plaintiffs have no locus-standi to file and maintain the present suit?OPD

7. Whether plaintiffs are estopped by their own act and conduct from filing the suit OPD

8. Whether suit is bad for non-joinder of necessary parties?OPD

9. Whether civil court has got no jurisdiction to entertain and try the present suit?OPD

10. Relief.

11. Both parties were provided with full and sufficient opportunity to adduce evidence in support of their respective claims and defences. Upon the conclusion of the evidentiary proceedings, and after hearing learned counsel for the parties at length, the learned Civil Judge (Junior Division), Kurukshetra, passed a decree, observing as follows:-

> "*In view of the findings recorded on the foregoing issues, the suit stands decreed with costs. The defendants are directed to deposit the decretal amount, being the mesne profits along with costs, within two months from the date of this judgment, by way of an F.D.R. in a nationalised bank for a period of one year, renewable annually until the disposal of the appeal pending before the Hon'ble High Court. In the event the question of title is ultimately determined in favour of the plaintiffs, they shall be entitled to realise the amount of the F.D.R. in accordance with law.*"

11.1. The learned learned Additional District Judge, Kurukshtra, upon reappraisal of the record and submissions, dismissed the appeal with following observations :-

> "The appeal is dismissed, with no order as to costs. The application under Order 41 Rule 33 CPC filed by Mohinder Singh is allowed, and mesne profits are fixed at ₹16,513.20/- for the period Kharif 1992 to Rabi 1993, being one-third of the amount earlier decreed. The respondents have already deposited the requisite additional court fee of ₹ 800/–.
>
> The appellants shall deposit the total mesne profits of ₹ 66,052.80/- within two months from today. The amount shall be invested in a renewable annual fixed deposit with a nationalised bank until the final disposal of Regular Second Appeal No. 1599 of 1995 pending before the High Court."

<u>RSA-1599-1995 (O&M) & RSA-4281-2004 (O&M)</u>

12. The appellants have preferred the present two appeals assailing the impugned judgments and decrees passed by the learned Courts below. Upon being found to raise substantial and arguable issues, the appeals were admitted to regular hearing, and notice was duly issued to the respondents. In response, Mr. Adarsh Jain, Senior Advocate, assisted by Ms. Amandeep Kaur, Advocate, entered appearance on behalf of the respondents. The matters were thereafter heard in full on the basis of the submissions addressed by learned counsel for both sides.

12.1. For a comprehensive, informed, and effective adjudication of the controversies arising in these appeals, the entire record of the learned Courts below was duly requisitioned and made available for the Court's scrutiny and consideration.

13. I have heard learned counsel for the parties at considerable length and have given anxious and careful consideration to their submissions, in light of the pleadings, the evidentiary record, and the concurrent findings

rendered by the Courts below. The entire record has been subjected to meticulous and exhaustive scrutiny to ascertain '*whether the impugned judgments and decrees suffer from any jurisdictional error, patent perversity, misappreciation or non-appreciation of evidence, or any other legal infirmity warranting interference in the exercise of appellate jurisdiction*'?

13.1 The exercise has been undertaken with a view to ensure that justice is not only done but is manifestly seen to be done, and that the appellate jurisdiction is exercised strictly in accordance with law, while giving due regard to the factual and legal matrix of the case.

14. Learned counsel for the appellants submits that the respondents–plaintiffs' suit is manifestly barred by limitation. He contends that, in essence, the present suit seeks to invalidate and avoid the sale deeds executed in favour of the appellants. The respondents–plaintiffs were fully aware of the said sale deeds at the time of their execution, yet no proceedings were initiated to challenge them within the statutory period of three years prescribed under Articles 58 and 59 of Schedule I to the Limitation Act, 1963. Consequently, the suit, insofar as it seeks to disturb or annul those sale deeds, is ex facie time-barred.

14. Counsel further argues that the very form and structure of the suit are fundamentally defective. According to him, the primary and substantive relief sought by the respondents–plaintiffs is the avoidance of the sale deeds standing in the names of the appellants. Therefore, the appropriate and legally permissible remedy would have been a suit for declaration seeking affirmation of the respondents–plaintiffs' alleged title on the basis of the sale deed asserted in their favour, coupled with a specific prayer for

cancellation of the sale deeds held by the appellants. Instead, the respondents–plaintiffs, through what counsel characterises as ingenious and strategically crafted pleading, have attempted to disguise the true nature of the relief sought and to artificially bring the suit within the period of limitation. He submits that both courts below failed to appreciate this vital aspect and erroneously held the suit to be within limitation merely on the premise that it was framed as a title-based action seeking possession.

14.2. It is further argued that both courts below overlooked the crucial fact that the appellants–defendants hold registered title deeds pertaining to the suit property. In the absence of the cancellation of these title deeds, a suit for possession based solely on an assertion of ownership is legally untenable and not maintainable in law.

14.3. Counsel also submits that the courts below committed a serious error in rejecting the appellants' defence that they are bona fide purchasers for value without notice. The finding recorded by the courts that Butta Singh was not an ostensible owner, he argues, is factually and legally erroneous, and its consequence has been the improper denial of the statutory protection available to bona fide purchasers. According to learned counsel, this constitutes a substantial misdirection, vitiating the conclusions reached by both courts below.

15. Conversely, learned counsel for the respondents–plaintiffs contends that the judgments rendered by both courts below suffer from neither illegality nor infirmity. He submits that the courts have correctly held the suit to be within the prescribed period of limitation. According to counsel, the respondents–plaintiffs instituted the suit on the strength of their

asserted title to the suit property, and in such cases, Article 65 of the Limitation Act, 1963 governs the limitation period. Under Article 65, no limitation period operates against the plaintiff unless the defendant affirmatively establishes that he has perfected his title by adverse possession for a continuous and uninterrupted period of twelve years. As the appellants have failed to discharge this burden, the courts below rightly concluded that the suit is not time-barred.

15.1. Counsel further submits that the respondents–plaintiffs are the lawful owners of the suit land by virtue of the sale deed dated 21.12.1967 (Ex. P-1) executed in their favour by Tehal Singh and Swarn Singh to the extent of a two-third share. On this basis, he argues, a suit for possession simpliciter without any ancillary relief was legally maintainable. The courts below, he asserts, correctly held that the appellants cannot avail themselves of the defence of being bona fide purchasers for value without notice, as the person from whom they claim, namely Buta Singh, was never the ostensible owner of the suit property within the meaning of law.

15.2. In light of the foregoing submissions, learned counsel prays for dismissal of the appeal, maintaining that the findings of the courts below warrant no interference.

16. The appeals gives rise to the following "*quaestio juris substantialis*" for determination by this Court:-

i. ***Whether the suit is barred in view of Articles 58 and 59 of Limitation Act, 1963?***

ii. ***Whether simplictor suit for possession is not maintainable and suit for cancellation of sale-deeds in favour of appellants was*** *required to be filed along with consequential relief of possession?*

iii. *Whether the Courts below wrongly refused to entertain the defence of bona fide purchase.*

17. **Whether the suit is barred in view of Articles 58 and 59 of Limitation Act, 1963** and **Whether simplictor suit for possession is not maintainable and suit for cancellation of sale-deeds in favour of appellants was required to be filed along with consequential relief of possession:-** Learned counsel for the appellants submits that the respondents–plaintiffs' suit is squarely barred by limitation. According to him, the true nature and substance of the suit is not merely for possession but, in effect, for (i) cancellation of the sale deeds standing in favour of the appellants, and (ii) a declaration of the respondents–plaintiffs' alleged title to the suit land on the basis of the sale deed dated 21.12.1967 executed in their favour. Counsel argues that since the appellants are in possession of the suit property, any action seeking to annul the sale deeds under which they claim title, or to declare the respondents–plaintiffs' superior title, is governed by the limitation period of three years prescribed for suits seeking a declaration or cancellation of an instrument. This period, he submits, begins to run from the date on which the cause of action first arises or from the date when the impugned document first comes to the knowledge of the aggrieved party. As the respondents–plaintiffs did not initiate proceedings within this statutory period, their suit is ex-facie time-barred.

17.1. In contrast, learned counsel for the respondents–plaintiffs contends that the suit is well within limitation. He maintains that the suit has been filed as a claim for possession based on the respondents–plaintiffs' asserted title to the suit property. In such cases, Article 65 of the Limitation Act, 1963 applies, which does not impose a fixed period of limitation upon a rightful owner seeking possession unless the defendant establishes acquisition of title by adverse possession for a continuous period of twelve years. As the appellants have failed to prove adverse possession, counsel submits that the courts below rightly held the suit to be within the permissible period..

17.2. The learned First Appellate Court has addressed and adjudicated upon the issue of limitation in paragraph No. 12 of the impugned judgment, which is reproduced as follows:-

> *"The counsel for the appellants thereafter argued that the suit is to be governed by Article 58 and not 65 of the Indian Limitation Act. Because in substance the suit is for declaration and not simply a suit for possession. In support he has placed reliance upon **Ibrahim alias Dharam Vir Vs. Smt. Sharifan alias Shanti, 1979 P.L.J.(P&H) 469** and **Devinder Kaur Vs. Manmohan Singh and others 1991 P.L.J. (P&H) 539**. I have perused both these authorities very carefully and I find that the same are not helpful to the appellants in any manner. Because once it is held that a valid sale deed was executed in favour of the plaintiff then the subsequent sale deeds executed by Buta Singh favour of lessees and thereafter by lessees to the contesting defendants would be of no help and could be ignored by the plaintiffs and there was no necessity to get these sale deeds declared as void, Resultantly, thus I hold that if the plaintiff succeeds to establish his right of ownership in the basis of sale deeds executed in the next year 1967 then there was no necessity of seeking declaration and the suit for possession is fully maintainable. Admittedly, the lessees were in possession of the suit land upto 30.6.1975 by the order of the Collector. The present suit has been filed on 6.4.1987. There being no occasion for*

the plaintiff to seek any relief of possession prior to 30.6.1975, the suit is well within time. The argument of the counsel as such stands repelled."

17.3. In the present matter, the validity of the sale deed pertaining to the suit property, purportedly executed in favour of the respondent–plaintiffs, was itself shrouded in doubt. It stands admitted between the parties that the mutation sanctioned on the basis of the sale deed executed in favour of the respondents–plaintiffs' predecessor-in-interest had been set aside vide order dated 31.05.1976 (Ex. D10). Consequently, when the title of Tehal Singh and Swarn Singh the predecessors-in-interest of the respondents–plaintiffs based on the sale deed (Ex. P2) was rendered questionable owing to the cancellation of the mutation entered pursuant to their own sale deed (Ex. P18) through the said order (Ex. D10), the revenue records continued to reflect Buta Singh, the predecessor of Iqbal Singh as well as of Tehal Singh and Swarn Singh, as the recorded owner of the suit property.

17.4. In these circumstances, the obligation squarely rested upon the respondents–plaintiffs to seek a formal declaration of their title. Furthermore, the appellants had previously been in possession of the property as lessees under the Collector, and subsequent to 1975, they continued in possession under various sale deeds executed in their favour namely, Ex. P3 dated 22.12.1976; Ex. P4 dated 10.02.1977; Ex. P5 dated 14.11.1979; and sale deeds dated 31.05.1982, copies of which are exhibited as Ex. P56 to Ex. P60. Thus, the defendants were in settled possession of the suit land under colour of title, supported by registered sale deeds.

17.5. Accordingly, for the respondents–plaintiffs to seek repossession of the suit property, it was legally imperative for them first to avoid, annul, or impugn the sale deeds forming the appellants' basis of title. A bare suit for possession simpliciter was therefore untenable in law. What the situation required was a composite suit seeking (i) a declaration of the respondents–plaintiffs' status and title, (ii) cancellation of the sale deeds executed in favour of the appellants–defendants, and (iii) consequential relief of possession.

17.6. This precise question came before the Hon'ble Supreme Court in **Rajeev Gupta and Others v. Prashant Garg and Others, 2025 INSC 552**, wherein the Hon'ble Apex Court, while considering an analogous factual matrix, elaborately held in paragraphs 32 to 34 as follows:-

> "32. In the present case, the appellants had been put in possession of the suit property in furtherance of the sale deeds executed by and between Ramesh Chand and the former after the same were registered. Hence, a civil suit seeking declaration of status or right simplicitor would not have sufficed for the plaintiffs since admittedly, they were required to seek further relief. A composite suit seeking cancellation, recovery of possession and injunction is what was required to be instituted, as distinguished from a suit seeking only recovery of possession. There is an admission of the plaintiffs on record that the appellants had moved into the suit property soon after execution of the sale deeds. Thus, the facts and circumstances were such that in addition to seeking cancellation of the sale deeds, since registered, the plaintiffs had to and did seek recovery of possession. Cancellation, we are inclined to hold, was the primary relief in the circumstances with recovery of possession being the ancillary relief.
>
> 33. Turning to the facts, the sale deeds executed by and between Ramesh Chand and the appellants were not sham and inoperative such that the plaintiffs could, at their option, not seek cancellation thereof.

Execution of the sale deeds was followed by registration as required by law. Whether or not Ramesh Chand had any subsisting right to transfer the suit property or whether or not the plaintiffs did trace their title through any valid deed/document could be examined by the trial court only if the civil suit had been instituted by the plaintiffs within the period of limitation, as prescribed. In a case of the present nature, it was not sufficient for the plaintiffs to claim a decree for recovery of possession only. They had to otherwise establish their right to the suit property.

34. The civil suit was instituted with a prayer for cancellation of the registered sale deeds, which the plaintiffs conveniently sought to give up to project that the suit was only for recovery of possession and, thus, duly instituted in terms of Article 65, i.e., within 12 (twelve) years 'when the possession of the defendant becomes adverse to the plaintiff'. After the civil suit failed on the ground of limitation, the relief of declaration was belatedly sought to be inserted in the plaint in course of the first appeal.

xxxxxxx"

18. In the present case, the respondents–plaintiffs instituted the suit solely for possession of the suit land and, in paragraph No. 18 of the plaint, asserted that the suit was within the prescribed period of limitation. Paragraph No. 18 of the plaint is reproduced hereinbelow:-

"18. That the lease-deed of the lessees defendants No.10 to 14 expired on 15.06.175 and thereafter, they remained as statutory tenants and the first alleged sale-deed executed in favour of defendants No.1 to 6 is dated 14.11.179 and on 31.05.1982 from which the alleged title of ownership was purchased by defendants No.1 to 6 and obtained possession thereunder, therefore, the suit is within limitation."

19. It is, therefore, abundantly evident that the plaintiffs themselves have founded their cause of action upon the execution of the sale deeds in favour of the defendants. This clearly demonstrates that the plaintiffs were fully conscious of the fact that their right to sue accrued on the very dates on which such sale deeds were executed. Under Article 58 of the Limitation Act, 1963, the period of limitation for a suit seeking a declaration commences from the date on which the cause of action first arises, and the statutory period of three years must be computed from the point in time when the right to sue initially accrues. Likewise, in terms of Article 59 of the Limitation Act, 1963, the limitation period of three years for seeking cancellation of an instrument begins to run from the date when the facts entitling the plaintiff to seek such cancellation or setting aside of the instrument first become known to him.

19.1. This legal position has been categorically affirmed by the Hon'ble Supreme Court in **Rajeev Gupta's** case (**supra**), wherein the Apex Court, in paragraphs 30 and 31 of the judgment, has elucidated the interpretation of Articles 58 and 59 with utmost clarity. The relevant paragraphs are reproduced hereunder:-

> "*30. Insertion by the Parliament of the word "first" under the column 'Time from which period begins to run' in Article 58 is not without a purpose. Such word, which was not there in the Limitation Act, 1908, has been designedly used in Article 58 to signify that a suit to obtain declaration (other than those referred to in Articles 56 and 57) has to be instituted within three years of 'when the right to sue first accrues'. In simpler terms, if cause of action to sue means accrual of the right for an actionable claim, it is the moment from*

which such right first accrues that the clock of limitation would start ticking. Thus, even though cause of action for instituting a suit might arise on varied occasions and/or at different times, what is material and assumes relevance for computing the period of limitation under Article 58 is the date when the right to sue first accrues to the aggrieved suitor. Though dominus litus, a suitor cannot pick and choose a time for approaching court. The period of limitation in terms of Article 58 being 3 (three) years, the prescribed period has to be counted from that date of the right to sue first accruing and the suit, if not instituted within 3 (three) years therefrom, would become barred by time.

31. Similarly, under the column 'Time from which period begins to run' in Article 59 providing for a three-year limitation period for cancellation of an instrument, the ordainment is that the period will run 'when the facts entitling the plaintiff to have the instrument... cancelled or set aside... first become known to him'. Any suit seeking cancellation of a particular instrument as void or voidable would be governed by Article 59 and, therefore, has to be instituted within 3 (three) years from date the suitor could be said to have first derived knowledge of the fact of such an instrument (which, according to him, is void or voidable) coming into existence. The word "first" in Article 59 would ordinarily have the same connotation as in Article 58."

20. From the foregoing discussion, it becomes unequivocally clear that the plaintiffs' suit is, in substance, one seeking declaration of title and cancellation of the instruments executed in favour of the appellants–defendants, along with the consequential relief of possession of the suit land. However, through artful and strategically crafted drafting, the suit was presented as if it was merely an action for possession based solely on title,

whereas its true and essential character was that of a declaratory suit coupled with a prayer for cancellation of the instruments, followed by a claim for consequential possession. Consequently, the period of limitation commenced from the dates of execution of the sale deeds in favour of the appellants–defendants, as is also evident from paragraph No. 18 of the plaint. Since the suit was instituted only in the year 1987, it is manifestly barred by the statutory period of three years, rendering the suit not only improperly framed but also hopelessly time-barred.

20.1. Furthermore, the defence of being bona fide purchasers for value without notice, as raised by the appellants–defendants, was rejected by both courts below. They did so on the reasoning that Buta Singh the person from whom the appellants trace their title was not the ostensible owner of the suit land, thereby precluding the appellants from availing the protection accorded to bona fide purchasers. The learned trial Court has elaborated upon these findings in paragraphs No. 40 to 42 of its judgment, which are reproduced as follows:-

> "40. The onus of proving this issue lies upon the defendants. At the time of arguments, it is submitted by the learned counsel for the defendants that the defendants are the bona-fide purchasers of the suit land from Buta Singh in terms of sale deeds placed on file.
>
> 41. In this regard, it is submitted by the learned counsel for the plaintiffs that since the suit land had already been sold by the General Power of Attorney of the original owner, therefore, the sale deeds executed by the owner thereafter cannot be said to be bona-fide.
>
> 42. I find force in the arguments advanced by the learned counsel for the plaintiffs in this regard and in view of my findings on Issue No.3, I hold that the defendants cannot be said to be bona fide purchasers.

Due to foregoing reasons this issue is decided against the defendants and in favour of the plaintiffs."

21. With respect to the defence of *bona fide* purchaser, the learned First Appellate Court has examined and adjudicated upon this contention in paragraph No. 12 of the impugned judgment, which is reproduced hereunder:-

12. The counsel for the appellants at last argued that the lessees were in possession of the suit land. They were possessing sale deeds in their favour and the entries in the revenue record were also in their favour and as such the subsequent defendant- vendees were bonafide purchaser for consideration and the transfer is protected Under Section 41 of the Transfer of Property Act. In support he has placed reliance upon **Smt. Shanti Vs. Suba and others, 1978 P.L.J. (P& H) 349** Again this authority is not applicable on the facts of the present case because it is correct that when the lessees were in possession of the suit land as well as of sale deeds and revenue record then every one in spite of reasonable case could presume that the lessees were owner of the suit that the person should be ostensible owner. Once I hold that the sale deeds executed by Darshan Singh attorney of original owner Buta Singh in favour of defendants No.7 to 9 and thereafter by defendants No.7 and 8 in favour of plaintiff was valid. Buta Singh was left with no right whatsoever to part with the ownership, In another words Buta Singh was not ostensible owner. The sale deeds executed by him in favour of the defendants of their predecessors lessees was not voidable but void. That being so, the plea of bona fide purchaser is also not available to the defendants, to get protection under Section 41 of the Transfer of Property Act."

22. Both the courts below have proceeded on the premise that the defence of *bona fide* purchaser is unavailable to the appellants on the ground that Buta Singh was not the ostensible owner of the suit property and had no subsisting title to convey. However, in arriving at this conclusion, both courts have overlooked a material and determinative fact namely, that the mutation of ownership sanctioned on the basis of sale deed Ex. P2 in favour of the respondents–plaintiffs' predecessor-in-interest had been cancelled by the competent Revenue Authority vide order Ex. D10. Upon such cancellation, the revenue record once again reflected Buta Singh as the owner of the suit property. In these circumstances, it cannot reasonably be held that Buta Singh was not the ostensible owner. On the contrary, the prevailing revenue entries unmistakably portrayed him as the recorded owner.

22.1. Accordingly, the finding of both Courts discarding the appellants' defence of being *bona fide* purchasers for value without notice is erroneous and unsustainable in law, as it disregards the legal effect of the revenue record and the presumption arising therefrom.

23. In view of the findings recorded here-in-above, the appeal preferred by the appellants, bearing **RSA-1599-1995**, stands allowed. Consequently, the impugned judgment and decree passed by the learned First Appellate Court are hereby set aside. The suit instituted by the respondents–plaintiffs is held to be barred by limitation. As the respondents–plaintiffs cannot be recognized as owners of the suit property, and the possession of the appellants cannot be regarded as unauthorized, the question of the appellants being liable to pay mesne profits does not arise. Accordingly, the connected appeal bearing **RSA-4281-2004** also merits acceptance and is hereby

allowed, resulting in the setting aside of the judgment and decree passed by the courts below.

24. Since the principal matters involved in the present proceedings have now been adjudicated and stand conclusively disposed of, all pending miscellaneous applications, if any, shall also stand disposed of accordingly, as no further orders are warranted thereon.

25. A photocopy of this order shall be placed on the connected case file for purposes of compliance, if necessary, and for ready reference in the proceedings captioned above.

(VIRINDER AGGARWAL)
JUDGE

21.11.2025
Gaurav Sorot

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No