GAHC030002212024

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : RFA/13/2024

Sh. Lalzuia (Deceased) r/b his daughter C. Lalhmangaihi and Anr.
R/o Dinthar Veng, Aizawl 2: Sh. Lalchhuanawma (Deceased) represented by his wife Lalthansang

VERSUS

Sh. T. Lalnghakliana (Deceased) R/b his daughter Smt. Lalpianpuii Tochhawng and 5 Ors.
D/o Sh. T. Lalnghakliana (L), R/o Galili Veng, Aizawl - 796008 2:Sh. Hruaikhawma

3:State of Mizoram represented by the Chief Secretary

4:The Secretary to the Government of Mizoram

5:The Director

6:The Assistant Settlement Officer-

Advocate for the Petitioner : Mr. Lalfakawma

Advocate for the Respondent : Mr Ashok Kumar Rokhum for R1

– B E F O R E –

HON'BLE MR. JUSTICE SOUMITRA SAIKIA

Advocate for the appellants : Mr. T. Lalzekima.

Advocate for the respondents : Mr. A.K. Rokhum.

Date on which judgment is reserved : 24.08.2026.

Date of pronouncement of judgment : 23.11.2026.

Whether the pronouncement is of the operative part of the judgment? : No.

Whether the full judgment has been pronounced? : Yes.

Judgment and Order (CAV)

Heard Mr. T. Lalzekima, learned counsel for the appellants. Also heard Mr. A.K. Rokhum, learned counsel for the respondents.

2] This Regular First Appeal is filed against the judgment and order dated 22.09.2023 and decree dated 22.09.2023 passed in Civil Suit No.101 of 2011 by the Court of Civil Judge (Senior Division) –III, Aizawl Judicial District, Aizawl, Mizoram. By the said judgment and order the suit was decreed in favour of the plaintiff therein. By the said judgment and order it was declared by the trial Court that the LSC No.241 of 1981 registered in the name of the defendant No.1 and the LSC No.103902/01/338 of 2006 registered in the name of defendant

No.3 had encroached upon the plaintiff's landed properties covered by LSC No. 241 of 1979 and LSC No.424 of 1979. The trial Court further declared that the plaintiff is the rightful owner of the land encroached by the lands of the defendant No.1 & 3 and further declared that defendant No.1 & 3 shall hand over full and vacant possession of the plaintiff's land which have been overlapped/encroached by the LSCs to the plaintiff within a period of 6 months from the date of the decree. It was also declared that defendant No.1 & 3 shall also dismantle/remove the house buildings erected by them within the plaintiff's land covered under LSC No.241 of 1979 and LSC No.424 of 1979 within a period of 6 months from the date of the decree. It was also declared that the defendant No.4 to 7 namely the State of Mizoram and the Department of Land & Revenue Settlement to cancel the LSC No.241 of 1981 being registered in the name of defendant No.1 and the LSC No.103902/01/338 of 2006 registered in the name of defendant No.3, within a period of 6 months from the date of the decree. In terms of the judgment and order the decree was also pronounced. Being aggrieved by the said judgment and order dated 22.09.2023 and the decree passed by the Civil Judge (Senior Division)-III the present regular first appeal has been preferred by the appellant No. 1, who is the daughter of the defendant No.1 in the Civil Suit No.101 of 2011 and the appellant No.2, who is the wife of the defendant No.3 in Civil Suit No.101 of 2011.

3] The respondent No.1 in the present appeal is the plaintiff and respondent No. 2 is the defendant No.2 and the respondents Nos. 3, 4, 5 & 6 are the State defendants No.4, 5, 6 & 7 respectively in the said civil suit. Both defendants Nos.1 & 3 in the civil suit have since been expired.

4] The facts of the present case which was pleaded before the trial Court are that the respondent No.1/plaintiff was issued a plot of land at Dinthar Veng, Aizawl by the DC Revenue, Aizawl in the year 1978 and the same was converted into two LSCs bearing LSC No.241 of 1979 issued in the name of the respondent No.1/plaintiff and LSC No.424 of 1979 was issued in the name of Smt. Lalthianghlimi, wife of the respondent No.1/plaintiff by the Land Revenue & Settlement Department, Aizawl. After the death of his wife, the respondent No.1/plaintiff was declared legal heir to LSC No.424 of 1979 vide Heirship Certificate No.53 of 2011. One, Shri. Tlanglawma, father of the appellants/defendant No.1 and 3 was issued LSC No.241 of 1981 by the State respondents herein which was later mutated in the name of the appellant No.1/defendant No.1 in the year 2006 on the death of Shri. Tlanglawma. It is the case of the respondent No.1/plaintiff that LSC No.241 of 1981 which is registered in the name of the appellant No.1/defendant No.1 had overlapped his hands covered by LSC No.241 of 1979 and LSC No.424 of 1979. Based on the complaint filed by the respondent No.1/plaintiff, the Asst. Settlement Officer – II, Land Revenue & Settlement Department, Aizawl issued a letter directing the respondent No.1/plaintiff and Shri. Tlanglawma (father of the appellants/defendants No.1 and 3) to appear before his office on 04.08.1999. Thereafter, the appellant No.1/defendant No.1 was directed to present himself for spot verification of their lands on 14.09.1999. Even though the appellant No.1/defendant No.1 was not present on the appointed date, spot verification over the lands was done by the Revenue Department. The appellant No.1/defendant No.1 started construction of a residential house within his land covered by LSC No.241 of 1981 and lived within the said land. The appellant No.1/defendant No.1 also demarcated his landed property and two other LSCs,

viz., LSC No.103903/01/337 of 2006 (issued in the name of the respondent No.2/defendant No.3). Pursuant to the spot verification report, the instant respondent No.6 issued order dated 28.09.2010 directing the appellant No.1/defendant No.1 to settle the dispute with the respondent No.1/plaintiff. The respondent No.1/plaintiff also requested the Revenue Department to cancel the LSCs issued in the name of the appellants/defendants No.1 and 3 and the respondent No.2/defendant No.2 since their LSCs had encroached upon his LSC. Since the notice as per Section 80(1) of the Code of Civil Procedure, 1973 issued to the respondents No.3-6/defendants No.4-7 yielded no positive result, the respondent No.1/plaintiff filed Civil Suit No.101 of 2011.

5] The appellants had jointly filed their written statement, wherein, among other defences, the maintainability of the suit was challenged as being barred by limitation, besides a denial of the plaintiffs' claims with regard to the overlapping of the land covered by the respective LSCs.

6] The trial Court framed the following issues.

> "*(1) Whether the suit is maintainable in its present form and style?*
>
> *(2) Whether the LSC No.241 of 1979 and LSC No.424 of 1979 are valid or not?*
>
> *(3) Whether the LSC No.241 of 1981, LSC No.103903/01/337 of 2006 and LSC No.103903/01/338 of 2006 are validly issued or not?*
>
> *(4) Whether the plot of lands belonging to the plaintiff and the plot of lands*

belonging to the defendant No.1-3 are encroaching upon/overlapping each other? If so, which of the LSCs will prevail?

(5) Whether the plaintiff is entitled to the reliefs claimed? If so, to what extent?"

7] Insofar as the issue No.1 is concerned, the trial Court accepted the views of the Predecessor Court which had passed vide order dated 17.09.2012 and therefore, held that the case is maintainable. The issues Nos.2, 3, 4 and 5 were decided in favour of the respondent No.1/plaintiff and against the defendants.

8] Before this Court, the learned counsel for the appellants submits that the suit is barred by limitation and this defence was taken by the defendants in the said civil suit, which however, was not decided by the trial Court, if this issue had been decided by the trial Court, there would have been no occasion for the trial Court to proceed to decide the other issues framed as the suit is clearly barred by limitation as is evident from the evidences laid out in the pleadings. It is submitted that the trial Court did not decide the limitation as is required to be decided and therefore, the impugned judgment and order and the decree drawn up is liable to be set aside and quashed as the suit was not maintainable and was required to be dismissed on the ground of limitation. The learned counsel for the appellants submits that the trial Court did not consider the aspect of the matter that the limitation goes to the root of the matter and in the absence of any specific date or knowledge being specifically mentioned in the plain or any supporting evidence thereto, it has to be held that the case is beyond limitation and the trial Court ought to have decided this issue specifically and in which event the suit would not have been allowed and it ought to have been dismissed

as barred by limitation.

9] The learned counsel for the appellants further submits that from the plaint it is clear that the plaintiff was allotted the plot of land in the year 1978 and which was converted into the two LSCs being LSC No.241 of 1979 and LSC No.424/1979. It is submitted that by the plaintiff's own account as narrated in the plaint after the death of his wife, LSC No. 241 of 1981 was issued in favour of the late father of the plaintiff No.1 & 3 and after the death of their father, the LSC No. 241 of 1981 was mutated in the name of the appellant No. 1 in the year 2006. It is further submitted that the defendants Nos. 1 & 3 are living in the land covered by LSC No.241 of 1981 since the year 1982. The Civil Suit No.101 of 2011 was filed in the year 2011, which is almost after 30 years of the defendants Nos. 1 & 3 living on the said plot of land. The plaintiffs had all along had accepted this fact and did not raise any objections at any point in time and therefore, by the averments made in the plaint it is clear that the suit has been filed after 30 years seeking cancellation of the LSC which are allotted to the defendants. The defendants Nos. 1 & 3 have enjoyed peaceful possession of the suit land for more than 30 years till the suit was filed. It is therefore, submitted that from a plain reading of the plaint, it is clear that the suit is bared by limitation and therefore, this issue ought to have been taken up and decided by the trial Court after allowing the parties to adduce proper evidence. The learned counsel therefore, submits that in the absence of any application seeking condonation of delay the trial Court had no jurisdiction to allow the plain in view of the specific bar under Section of the Limitation Act.

10] The further submission of the learned counsel for the appellants is that

the boundaries of the property were not clearly demarcated and therefore, the claim of the plaintiffs ought not to have been entertained. In the absence of the boundaries being clearly demarcated, there could not have been any occasion for the trial Court to allow the suit by giving a declaration that the land of the appellants had encroached upon the land covered by the LSCs of the plaintiffs. It is further submitted that in the absence of the boundaries being clearly demarcated, there was no occasion for the trial Court to issue direction to the State defendants to cancel the LSCs issued in favour of the defendants and a further direction to the defendants to hand over the land to the plaintiffs.

11] The learned counsel for the appellants has referred to and relied upon the following judgments:

1. *Noharlal Verma vs. District Cooperative Central Bank Ltd., Jagdalpur* reported in (2008) 14 SCC 445.

2. *Sneh Gupta vs. Devi Sarup and Ors.* reported in (2009) 6 SCC 194.

3. *Subhaga and Others vs. Shobha and Others* reported in (2006) 5 SCC 466.

4. *Life Insurance Corporation of India and another Vs. Ram Pal Singh Bisen* reported in (2010) 4 SCC 491.

12] The learned counsel for the respondents on the other hand submits that there is no infirmity in the judgment and order rendered by the trial Court. It is submitted that the question of maintainability has been decided already by the

predecessor judge vide order dated 17.09.2012. This order has attained finality as no further appeal has been preferred by the appellants challenging the said order and therefore, there is no question of limitation to be decided again. He therefore, there is no infirmity in the impugned judgment and order dated 22.09.2023 whereby, the trial Court relied upon the earlier order 17.09.2012 passed by the predecessor Judge holding that the suit is maintainable in the present form.

13] It is contended on behalf of the respondents that the claims made by the plaintiff cannot be scuttled merely on the ground of limitation as the merits of the case must be examined independently and the plaintiffs cannot be non suited only on the ground of limitation without the attending facts being properly examined by the Court. It is submitted that in the facts of the present case the trial Court had examined all aspects of the matters upon the evidence being adduced and has thereafter, found that the prayer of the plaintiffs are required to be allowed and the same has been therefore, allowed with proper direction.

14] It is further submitted that the trial Court, upon the evidence adduced, has come to a finding that the LSCs issued to the plaintiff was at an earlier point in time and the LSCs issued to the defendants, namely the present appellants was issued at a later point in time and consequently the LSCs being issued, the LSCs issued at an earlier point in time will prevail over the LSCs issued at a later point in time. Therefore, the claims of the holder of the land on the basis of the LSCs issued at an earlier point in time will have to be recognized over the LSCs issued at a subsequent point in time where there is an allegation of overlapping

of the lands allotted to the settlers under the LSCs issued by the State.

15] The learned counsel for the respondents referring to Section 22(i) of the Mizoram (Land Revenue) Act, 2013 submits that where there is more than one claim of ownership over the same plot of land, then the first certificate holder shall be the owner. He submits that this has also been held by the Coordinate Bench of this Court in a judgment rendered on 06.04.2017 in RFA No.10 of 2014. He therefore, submits that there being no merits in the appeal and that the present appeal should be dismissed and the judgment and order and the decree drawn up by the trial Court in Civil Suit No.101 of 2011 vide judgment and order dated 22.09.2023 should be sustained.

16] The learned counsel for the respondents has referred and relied upon the following judgments:

1. In Smt. Zampuii vs. The State of Mizoram and 4 Ors. (in RFA No.10/2014).

2. Inder Singh Vs. The State of Madhya Pradesh {SLP (Civil) No.6145/2024}

17] The learned counsel for the parties have been heard and the pleadings available on record have been carefully perused.

18] The trial Court records called for which are available before this Court have also been duly examined.

19] It is seen from the trial Court records that by order dated 17.09.2012 issued by the predecessor Judge held that the suit is maintainable. It is also not disputed that no further appeal has been preferred against the order dated 17.09.2012.

20] The facts as evident from the pleadings are that the LSC No.241 of 1979 and LSC No.424 of 1979 were issued in respect of the lands claimed to be under the possession of the plaintiff. The LSC No.241 of 1979 was issued in the name of the plaintiff and his wife. It is the pleaded case of the plaintiff that after the expiry of his wife, LSC No.241 of 1981 was issued in favour of the late father of the appellants and which land was within the plaintiff's plot of land, overlapping the plaintiff's LSC vide LSC No.241 of 1979 and LSC No.424 of 1979.

21] From the pleadings it is clear that the dispute between the plaintiff and the defendants with regard to the plot of land covered by LSC No.241 of 1979 and 424 of 1979 and the plot of land covered by LSC No.241 of 1981 and LSC No.103903/01/337 of 2006 and LSC No.103903/01/338 of 2006 arose between the parties when the LSCs were issued to the present appellants' late father. The LSCs were issued in the year 1981 and subsequently after the expiry of the late father of the appellants the same was mutated in the name of the present appellants in the year 2006.

22] Although there is an averment in the plaint that in spite of orders being passed by the Assistant Settlement Officer-I, Land and Revenue Settlement Department of Aizawl, Mizoram stating that the land covered by LSC No.241 of 1981 and LSC No.103903/01/337 of 2006 and LSC No.103903/01/338 of 2006

had overlapped the plaintiff's plot of land, the defendants continued to illegally occupy the said plot of land belonging to the plaintiff. The suit finally came to be filed in the year 2011.

23] From the pleadings it is clear that the dispute between the plaintiff and the defendants initially arose after the expiry of the plaintiff's wife and mutation of the LSC No.241 of 1981 in the name of the defendant No.1 and 3's father.

24] The suit filed by the plaintiff was essentially a suit under section 14 of the Mizoram Civil Courts Act of 2004 seeking a declaration that the land claimed by the plaintiff was covered by Land Settlement Certificates LSC Nos. 241 of 1979 and 424 of 1979 situated at Dinthar Vank, Aizawl, Mizoram, and that portions thereof had been encroached upon by the defendants No. 1 and 3, whose lands were covered by LSC No. 241 of 1981 and LSC Nos. 103903/01/337 and 103903/01/338 of 2006. The plaintiff further sought a direction to the Revenue Department to restore possession of the entire encroached portion of the plaintiff's land. The prayers made in the suit are as follows:

"*i) For a decree in favour of the plaintiff and against the defendants.*

ii) For a decree directing the defendant- Revenue Department for cancellation of LSC 241 of 1981 issued in the name of Lalzuia, LSC No. 103903/01/337 of 2006 issued in the name of Hruaikhawma and LSC No.103903/01/338 of 2006 issued in the name of C. Lalchhuanawma being illegally issued to the defendant No.1-3.

iii) For a decree directing the defendant No.1-3 to hand over full and vacant possession of the plaintiff's land which has been overlapped/encroached

by their LSCs to the plaintiff and for directing the defendant No.1-3 to dismantle/remove the house buildings erected by them within the plaintiff's land.

iv) For a decree declaring that the plaintiff is the rightful owner of the land encroached by the defendant No.1-3.

v) For cost of the suit.

vi) For any other relief(s) as the Hon'ble Court may deem fit and proper."

25] It appears to the Court that the suit was primarily directed towards seeking a decree for cancellation of Land Settlement Certificates (LSCs) Nos. 241 of 1981, 103903/01/337 of 2006 and 103903/01/338 of 2006, issued in favour of the defendants No. 1 and 3, namely, the appellants herein, and for consequential directions to the Revenue Department in that regard.

26] The prayer seeking a direction to the defendants No. 1 and 3 to hand over vacant and peaceful possession of the land claimed by the plaintiff can be granted only upon the Trial Court recording a finding in favour of the plaintiff and allowing the prayer for cancellation of the Land Settlement Certificates issued in favour of the defendants by directing the Revenue Department accordingly. There is no specific provision in the Mizoram Land Revenue Act of 2013 or any other act that has been placed before the Court by the plaintiff regarding the period of limitation for entertaining the claims for cancellation of Land Settlement Certificates.

27] In the absence of any specific provision governing the period of limitation,

the provisions of the Limitation Act, 1963, would be applicable. In terms of the said Act, the period of limitation is three years from the date on which the plaintiff first acquired knowledge of the cause of action

28] It is not discernible from the pleadings before the Court as to when the issuance of the Land Settlement Certificates, which are sought to be interfered with by way of a decree against the Revenue Department came to the knowledge of the plaintiffs so as to enable them to institute the suit within the period of limitation prescribed under the Limitation Act. The pleadings reveal that the plaintiffs became aware of the overlapping LSCs, whereby portions of the plaintiff's land were included within the lands allotted to the defendants in the year 2006. The suit, however, came to be instituted only in the year 2011.

29] Therefore, it appears to the Court that the issue whether the suit is barred by limitation ought to have been decided by the trial Court. The issues framed reveal that maintainability of the suit in its present form and style was framed as issue No.1. The trial Court as regards Issue No.1, held that the suit to be maintainable in view of the order dated 17.09.2012 passed by the predecessor Judge. From the records, it is seen that the predecessor Judge had passed the following order on 17.09.2012 which is extracted from the order sheet available in the trial Court records.

> "*The parties are present through respective learned counsels. Today is fixed for pre-hearing on maintainability of the suit.*
>
> *I have heard both parties submitting verbally (not legible) arguments.*

This Court has decided to maintain the case in its present form and style. Hence, the case is maintained.

Fixed 23.10.2012 for plaintiff's evidence."

30] From a bare perusal of this order, it is clear that the predecessor Judge had decided the maintainability of the case. From the records, it is also seen that the issues were framed only on 10.08.2012.

31] The said order passed by the predecessor Judge was not appealed against. Under such circumstances, a question arises as to whether it was necessary again by the trial Court who had delivered the judgment and order to decide on the question of maintainability of the suit including the limitation as the earlier order dated 17.09.2012 of the predecessor Judge did not specifically deal with the objections raised regarding the question of limitation.

32] From the said order, it is also not clear that the said order passed by the predecessor Judge was a consent order and whether it was necessary for the trial Court, which finally rendered the judgment and order and drew up the decree, to decide the question of limitation in the face of a specific defence to that effect taken by the defendants, namely the appellants before this Court.

33] In this context, it is necessary to examine the law on this aspect.

34] *In Noharlal Verma (supra)* it was held that limitation goes to the root of the matter. If a suit, an appeal or application is barred by limitation, a Court or an adjudicating authority has no jurisdiction, power or authority to entertain

such suit appeal or application and decide it on merits. The Apex Court held that the bare reading of section 3(1) of the Limitation Act. 1963 leaves no room for doubt that if a suit is instituted, appeal is preferred or application is made after the prescribed period, it has to be dismissed even though no such plea has been raised or a defence has been set up. In other words, even in the absence of such plea by the defendant, respondent or opponent or the authority must dismiss such suit, appeal or application if it is satisfied that the suit, appeal or application is barred by limitation. The relevant paragraphs are extracted below:

> "*32. Now, limitation goes to the root of the matter. If a suit, appeal or application is barred by limitation, a court or an adjudicating authority has no jurisdiction, power or authority to entertain such suit, appeal or application and to decide it on merits.*
>
> *33. Sub-section (1) of Section 3 of the Limitation Act, 1963 reads as under:*
>
> *"3. Bar of limitation.-(1) Subject to the provisions contained in Sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence."*
>
> *(emphasis supplied)*
>
> *Bare reading of the aforesaid provision leaves no room for doubt that if a suit is instituted, appeal is preferred or application is made after the prescribed period, it has to be dismissed even though no such plea has been raised or defence has been set up. In other words, even in absence of such plea by the defendant, respondent or opponent, the court or authority must dismiss such suit, appeal or application, if it is satisfied that the suit, appeal or application is barred by limitation."*

35] In *Sneh Gupta vs. Devi Sarup and Ors.* reported in (2009) 6 SCC 194 this Court observed as follows:

> "*70. Even otherwise, we do not think that any error has been committed by the High Court in arriving at the finding that the appellant had knowledge of the passing of the compromise decree much earlier. She did not file any application for condonation of delay.*

She filed two more applications for recall of the order dated 6-11-2004 in other enacted appeals. Those applications were also filed after expiry of the period of limitation and none of those applications were also accompanied with an application for condonation of delay. In absence of any application for condonation of delay, the Court had no jurisdiction in terms of Section 3 of the Limitation Act, 1963 to entertain the application for setting aside the decree."

36] In *Emkay Exports, Mumbai v. Madhusudan Shrikrishna* reported in *(2008) SCC OnLine BOM 598*, a full bench of the Bombay High Court was decided the question whether orders made during pendency of the suit, particularly orders under Rule 3 of Order 37 CPC which ultimately may result in passing of a decree, cannot be assailed or challenged in an appeal against the decree. There were divergent views of the two different benches of the Bombay High Court, which is why the matter was placed before the full bench. The Bombay High Court held that in an appeal challenging the final decree, it will be open for the appellant to urge that the orders passed during the pendency of the suit ought not to have been passed and the judgment could not have been pronounced. This is however, subject to the condition that the orders made during the tendency of the suit were not affirmed by an Appellate Court or a Court of higher jurisdiction in an appeal taken out by the aggrieved party against whom finally a decree is made. The relevant paragraphs are as follows:

31. No provision has been brought to our notice which on its plain language or even by necessary implication, would support the view that the orders made during the pendency of the suit, particularly orders under Rule 3 of Order 37 which ultimately may result into passing of the decree, cannot be assailed or challenged in an appeal against the decree. The appellant challenging the final decree can sate v aroue that the orders passer during the nendenev of the suit ought not to have been passed and the judgment could not have beer pronounced. However, this is subject to the condition that the orders made during the pendency of the suit were not affirmed by the Appellate Court or Court of higher jurisdiction in an appeal taken out by the aggrieved party against whom finally a deciee is made. The doctrine of finality and principles of res judicata, constructive or otherwise, would justify introduction of such an exception. The parties cannot be permitted to agitate

and re-agitate the same issues which have attained finality at different stages of the suit or even in an appeal. This can be viewed from another angle. During the pendency of the suit different kinds of orders could be passed, the ones which are interlocutory orders of procedural nature hardly have any bearing on the matters in issue or on the rights of the parties, while the others are interlocutory orders which determine the controversy and affect the rights of the parties to the suit. Such orders could prejudice the interest of the party against whom they are passed. The former class of orders which are not appealable under Order 43 would also not be appealable with the aid of clause 15 of the Letters Patent, while the later class of orders would be appealable under either of the statutory provisions. We have already discussed in some detail the orders which would squarely fall within the ambit of expression "judgment" in clause 15 of the Letters Patent. Does it mean that the party is bound to appeal every interlocutory order which even may be a step in the procedure that leads to a final decree? This question was answered in the negative by the Privy Council in Sheonoth vs. Ramnath, (1865) 10 MIA 413 and explained by the Supreme Court in Achal Misra vs. Rama Shanker Singh, (2005) 5 SCC 531. The Supreme Court held as under :

> *"13. This principle is recognised by section 105(1) of the Code of Civil Procedure and reaffirmed by Order 43, Rule 1-A of the Code. The two exceptions to this rule are found in section 97 of the Code of Civil Procedure, 1908, which provides that a preliminary decree passed in a suit could not be challenged in an appeal against the final decree based on that preliminary decree and section 105(2) of the Code of Civil Procedure, 1908 which precludes a challenge to an order of remand at a subsequent stage while filing an appeal against the decree passed subsequent to the order of remand. All these aspects came to be considered by this Court in Satyadhyan Ghosal vs. Deorajin Debi wherein, after referring to the decisions of the Privy Council, it was held that an interlocutory order which had not been appealed from either because no appeal lay or even though an appeal lay, an appeal was not taken, can be challenged in an appeal from a final decree or order. It was further held that a special provision was made in section 105(2) of the Code of Civil Procedure as regards orders of remand where the order of remand itself was made appealable. Since section 105(2) did not apply to the Privy Council and can have no application to appeals to the Supreme Court, the Privy Council and the Supreme Court could examine even the correctness of an original order of remand while considering the correctness of the decree passed subsequent to the order of remand. The same principle was reiterated in Amar Chand Butail vs. Union of India and in other subsequent decisions."*

34. Proper analysis of the above-stated principles, which are well established, show that the contention raised on behalf of the respondents herein, that in the appeal against the decree passed by the trial Court, the appellants are debarred from raising challenge to the interlocutory orders, is not sustainable. Admittedly, in the present case, the interlocutory order passed under Order 37, Rule 3 was not challenged by the parties to the lis at any stage. As a result of non-compliance of the terms of the order dated 21st September, 2005 granting conditional leave to defend the Suit to the defendant, the Court passed the decree on 30th November, 2005 noticing that there was no defence to the Suit. This decree for the first time has been challenged in appeal by the appellant. The orders which were passed during the pendency of the Suit and ultimately resulted in passing of the

decree, can be challenged by the appellant by taking appropriate grounds in the memorandum of appeal, filed by the appellant, against the judgment and decree dated 30th November, 2005. The legality of the unchallenged orders could always be challenged by the appellant while preferring an appeal against the decree. This in any way does not offend the principles of public policy and concept of finality and is also not hit by the principles of res judicata. The provisions of Civil Procedure Code discernly indicate availability of such right to a party which is aggrieved from the interim orders and had not taken benefit of remedy of appeal, if such orders were otherwise appealable in law. An interlocutory order could either be appealed against within the scope of Order 43 or Clause 15 of the Letters Patent. Of course, the situation will be entirely different where a party has availed of the remedy of appeal against such interim orders deciding rights of the parties and has remained unsuccessful before the Appellate Court. Wherever the Appellate Court has decided such appeal on merits holding that the order was passed by the trial Court is not liable to be set aside, in that event the aggrieved party cannot re-agitate the legality or correctness of such interlocutory order as and when the aggrieved party prefers an appeal against the final decree. It is also a settled canon of law that principles of res judicata are also attracted at the interim stages of a Suit. An interim order like the order granting conditional leave to defend which is challenged in an appeal and has been confirmed by the Appellate Court and the appeal is dismissed on merits, re-opening of such issue by taking it up as a ground in the appeal against the decree again would not be permissible.

36. The above principle of law is a clear precedent to be applied to the facts and circumstances of the present case. The minor distinction on facts is inconsequential. In both the cases, before the Supreme Court and in the case before us, the decree has followed as a result of refusal of leave to defend the Suit and/or non-compliance to the order granting conditional leave. The order passed during pendency of Suit, despite an independent remedy, was permitted to be challenged in the appeal against the decree. In light of the above precedent, the question of law can clearly be answered, besides the fact that, for the detailed reasons recorded by us in this judgment, there is no reason for taking any other view. The view taken by the Division Bench in Bombay Enamel Works (supra) is more in consonance with the statutory provisions and settled principles of law. It was rightly held in that case that in First Appeal the propriety of any interlocutory or interim order made during the proceedings in the trial Court could be challenged. However, we may hasten here to add an exception that when such an order had been challenged before the Court of competent jurisdiction and the appellant remained unsuccessful, challenge to such order cannot again be made in the appeal against decree finally passed. In the case of M/s D. Shanalal (supra), the order granting conditional leave to defend and its non-compliance had resulted in passing of the decree. The order passed granting conditional leave was assailed by the parties upto the Supreme Court and had remained undisturbed. In those circumstances, certainly the parties could not be permitted to re-agitate or reopen the contentions raised in relation to passing of the said order as it has already attained finality. This approach would certainly be in consonance with canons of law and public policy.

37. In view of our above detailed discussion, while concluding, we state the principle of law as under:-

> *"Propriety, legality or correctness of an interlocutory order granting conditional leave or refusing leave to defend the Suit could be challenged by the aggrieved party in an appeal preferred against the final decree provided that the party had not unsuccessfully challenged that order during the pendency of proceedings, prior to passing of the decree or otherwise."*

37] In another judgment rendered by the Bombay High Court, in *Nahoor Amin Chinpade vs. Rakirmohammad P. Shaikh* held that it is well established that even if the parties were not to raise the plea of limitation, it is the duty of the Court to examine the same if it arises for consideration. The obligation of the Court is still greater when the party specifically raises that issue. It would have been a different matter if the Court were to consider that issue and answer it one way or the other. The approach of the Court in neither framing an issue on whether the suit was barred by limitation nor adverting to the question in the reasons recorded in the judgment cannot withstand judicial scrutiny. The High Court, therefore, interfered with the judgment and restored the file to be decided afresh on its own merits in accordance with the law after formulating all necessary points.

38] In *Satyadhyan Ghosal v. Deorajin Debi* reported in (1960) SCC OnLine SC 15, the Apex Court held that the effect of the rule, that a decision not appealed from must be held to be finally decided at every stage of the litigation even in respect of superior Courts, would be to place upon every litigant against whom an interlocutory order is made the burden of running to the higher Courts for redress of his grievances. This would be so even though the final order may well be in his favour, in which case it may not be necessary for him to approach the Appellate Court at all. The Apex Court held that apart from the inevitable delay in the progress of litigation that such a rule would cause the interest of other party to the litigation and would also generally suffer. By such repeated reports

to higher Courts in respect of every interlocutory order alleged to have been wrongly made. It was held that an interlocutory order which had not been appealed either because no appeal lay or even though an appeal lay, an appeal was not taken, could be challenged in an appeal from the final decree or order. The relevant paragraphs are as follows:

> "*7. The principle of res judicata is based on the need of giving a finality to judicial decisions. What it says is that once a res is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter — whether on a question of fact or a question of law — has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again. This principle of res judicata is embodied in relation to suits in Section 11 of the Code of Civil Procedure; but even where Section 11 does not apply, the principle of res judicata has been applied by courts for the purpose of achieving finality in litigation. The result of this is that the original court as well as any higher court must in any future litigation proceed on the basis that the previous decision was correct.*
>
> *8. The principle of res judicata applies also as between two stages in the same litigation to this extent that a court, whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings. Does this however mean that because at an earlier stage of the litigation a court has decided an interlocutory matter in one way and no appeal has been taken therefrom or no appeal did lie, a higher court cannot at a later stage of the same litigation consider the matter again?"*

39] In *Kamalesh Bapu and Others Vs. Lajpat Rai Sharma and Others* reported in *(2008) 12 SCC 577,* the Apex Court held that Section 3(1) of the Limitation Act casts a duty on the Court to dismiss a suit or an appeal or an application, if made after the prescribed period, although, limitation is not set up as a defence. The relevant paragraphs are as follows:

> "*17. It is well settled that Section 3(1) of the Limitation Act casts a duty upon the court to dismiss a suit or an appeal or an application, if made after the prescribed period, although, limitation is not set up as*

a defence.

18. In the instant case, such a defence has been set up in the written statement though no issue was framed in that regard. However, when the trial court had in terms of the mandate of Section 3(1) come to a finding that the suit was barred by limitation, it was the duty of the first appellate court and also of the High Court to go into the said question and to decide the same before reversing the judgment of the trial court on the various issues framed in the suit. Even though the various issues were decided in favour of the plaintiff, both by the first appellate court and the High Court, the same were of no avail since the suit continued to remain barred under Article 59 of the Limitation Act, 1963.

20. It is quite obvious that this aspect of the matter had not been looked into either by the first appellate court or by the High Court, nor was it raised on behalf of the appellants herein. The question, therefore, which remains to be decided is whether such a plea can now be taken in the special leave proceedings.

21. It is no doubt true, as was pointed out by this Court in Balasaria Construction (P) Ltd. and also in Narne Rama Murthy case, that if the plea of limitation is a mixed question of law and fact, the same cannot be raised at the appellate stage. We have no problem with the said proposition of law. What we are concerned with is whether the said proposition is applicable to the facts of this case. In this case the plea of limitation had been raised in the written statement and though no specific issue was framed in respect thereof, a decision was given thereupon by the learned trial court.

22. Apart from Section 3(1) of the Limitation Act, even Order 7 Rule 11(d) of the Code of Civil Procedure casts a mandate upon the court to reject a plaint where the suit appears from the statement in the plaint to be barred a by any law, in this case by the law of limitation. Further, as far back as in 1943, the Privy Council in Lachhmi Sewak Sahu v. Ram Rup Sahu held that a point of limitation is prima facie admissible even in the court of last resort, although it had not been taken in the

lower courts."

40] The Apex Court Held that Appeal from Section 3(1) of the Limitation, even Order 7, Rule 11(d) of the Code of Civil Procedure a mandate upon the Court to reject a plaint where the suit appears from the statement in the plaint to be barred by any law. The Apex Court held that the reasoning behind the said proposition is that certain questions relating to the jurisdiction of a Court including the limitation goes to the very root of the Court's jurisdiction to entertain and decide a matter, as otherwise, the decision rendered without jurisdiction will be a nullity.

41] In *R. Nagraj (Dead) through Lrs. and Another Vs. Rajmani and Others* reported in *(2025) SCC OnLine SC 762* on the question of any decision whether to be rendered by the trial Court, the Apex Court held as under:

> "***20.*** *Limitation, as we generally know is a mixed question of fact and law. However, there is no hard and fast rule that every question of limitation is to be treated as a mixed question of fact and law. In cases, where the action is initiated after several years after the right to sue accrued, without any pleadings to explain the reasons for delay or as to when the fraud was discovered, the question of limitation is to be treated as a question of law. A recourse may be had to Order VI Rules 4 and 10 CPC, which mandates that specific particulars would have to be given in the pleadings. Once such a plea is raised in the pleadings, then the burden lies on the person to prove that the delay was due to any plausible reason and it is always well within the knowledge of the other party to contend and prove that the opposite party had prior knowledge about the disputed fact and that his right to sue or defend had also accrued by that date. Even in the absence of specific pleadings regarding the limitation in the plaint or a plea of defense, there is a bounden duty on every civil Court to ascertain as to whether the lis has been*

initiated within the time prescribed under law, even if the parties to the lis had not raised any objections. This right flows from the mandate of Section 3 of the Limitation Act, 1963. A useful reference may be had to the judgment of this Court on this aspect, in V.M. Salgaocar and Bros. v. Board of Trustees of Port of Mormugaos, wherein, it was held as follows:

> *"20. The mandate of Section 3 of the Limitation Act is that it is the duty of the court to dismiss any suit instituted after the prescribed period of limitation irrespective of the fact that limitation has not been set up as a defence. If a suit is ex facie barred by the law of limitation, a court has no choice but to dismiss the same even if the defendant intentionally has not raised the plea of limitation.*
>
> *21. This Court in Manindra Land & Building Corpn. Ltd. v. Bhutnath Banerjee [(1964) 3 SCR 495 : AIR 1964 SC 1336] held (AIR para 9):*
>
> > *"Section 3 of the Limitation Act enjoins a court to dismiss any suit instituted, appeal preferred and application made, after the period of limitation prescribed therefor by Schedule I irrespective of the fact whether the opponent had set up the plea of limitation or not. It is the duty of the court not to proceed with the application if it is made beyond the period of limitation prescribed. The Court had no choice and if in construing the necessary provision of the Limitation Act or in determining which provision of the Limitation Act applies, the subordinate court comes to an erroneous decision, it is open to the court in revision to interfere with that conclusion as that conclusion led the court to assume or not to assume the jurisdiction to proceed with the determination of that matter."*

In cases, where the pleadings are silent, then it becomes the duty of the Court

to ascertain from the evidence and the overall facts of the case, as pleaded by either party, and to render a finding on limitation where the question of limitation is to be treated as a question of law, since the Court cannot entertain frivolous or stale claims. It is also apropos to reiterate the settled position of law that a question of law can be raised at any stage."

42] The Apex Court held that there could be several points directly or indirectly connected with the main issue that has been framed. In such cases where larger issue that has been framed is wide enough to cover different points on disputes within it there is no necessity to frame specific issue on the subject. The challenge made before the Apex Court was that the trial Court had decided the question of limitation without framing a separate issue and which was upheld by the First Appellate Court but rejected by the High Court. The Apex Court held that the failure of the trial Court and the First Appellate Court to formulate a separate issue is not fatal to the judgment rendered by them. The trial Court in performance of its duty mandated under Section 3 of the Limitation Act has taken up the question of limitation and upon perusal of the pleadings and evidence has decided the same and the suit was dismissed as being barred by limitation. Therefore, it is clear from the analysis of the judgment referred to that the duty cast upon a trial Court both under Section 3 of the Limitation Act as also under Order 7, Rule 11(d) of the Code of Civil Procedure to decide the maintainability of a suit including the question of limitation even if no specific issue has been framed or raised. The bounded duty of the trial Court under the Limitation Act is to decide on the question of limitation, as the question of issue of limitation goes to the very root of the

matter including the jurisdiction of the trial Court to decide a matter which is otherwise barred under the law of limitation. For deciding the question of limitation, if it is evident from the pleadings and the evidence adduced in respect of the other issues framed that the question can be effectively decided. Non framing of a issue may not be fatal to the judgment. However, the question of limitation must be effectively decided by the trial Court particularly, when the defence of the same has been specifically pleaded in the written statement filed before the Court.

43] From the analysis of the judgments above, it is clear that the question of limitation goes to the root of the matter. Even in cases where limitation is not specifically agitated upon, it will be the bounded duty of the Court to examine the issue on the question of limitation, if it appears to the Court that the suit could be barred by limitation and where a specific defence is raised on the question of limitation, it is necessary for the Court to examine this issue in detail and pass appropriate orders.

44] Coming to the facts in the suit, it is seen that by order dated 17.09.2012, the predecessor Judge had decided that the suit be maintainable without specifically deciding on the question of limitation. It is also seen from the pleadings that since the specific defence of the suit being barred by limitation was taken by the defendants in respect of the suit being barred by limitation, it was incumbent on the trial Court to decide on this issue specifically by framing a proper issue, if required. Upon perusal of the order dated 17.09.2012 as discussed in the preceding paragraphs above it is seen that the predecessor Judge held the suit to be maintainable and there was no discussion on the

question of limitation. The issues framed also did not specifically raise any issue regarding suit being barred by limitation. Under such circumstances, it was necessary for the trial Judge to have examined the question of limitation on the basis of the facts and the evidences adduced, if required by framing a specific issue on the question of the suit being barred by limitation. The trial Judge did not proceed on the question of limitation on the ground that the suit has been held to be maintainable as per issue No.1 by the learned predecessor Judge. The trial Court relied upon the findings by the Predecessor Court, while drawing up the final judgment and order and the decree notwithstanding the fact that there was no discussion by the predecessor Judge on the question of the suit being barred by limitation in the face of the specific defence raised by the defendants.

45] Under such circumstances and in view of the discussions above, it is clear that the trial Judge ought to have decided on the question of limitation in the face of the specific defence raised by the defendants. It was the bounden duty of the learned trial Judge to decide and render it's findings on the questions of limitations notwithstanding the conclusion of the predecessor trial Judge on the question of maintainability of the suit in the present form. Limitation being an issue which goes to the very root of the matter, in the event the trial Judge had decided the question of limitation against the plaintiffs, then the suit would have been dismissed on the question of limitation. As has been held by the Apex Court in the discussions above that any order passed by a Court prior to the final judgment and order, more particularly the order on the question of maintainability of the suit can also be examined by the first Appellate Court notwithstanding that no separate appeal has been filed by the aggrieved party

against such orders. The order dated 17.09.2012 passed by the predecessor Judge holding the suit to be maintainable in the present form, although was not appealed against by the defendants by preferring appropriate appeal, it is open to the First Appellate Court to examine this matter. In view of the findings arrived at by this Court, it is not necessary to discuss the judgments referred to by the respondents.

46] From the discussions above, it is clear that the trial Judge had failed to decide on the question of limitation, notwithstanding the fact that there was a clear defence raised before the trial Court by the defendants. The reference to the order dated 17.09.2012 passed by the predecessor Judge, deciding Issue No. 1 in favour of the plaintiff, must be held to be contrary to law and procedure, as the predecessor Judge did not specifically decide the question of the suit being barred by limitation, notwithstanding the specific defence raised by the defendants. The trial Judge was therefore, required to examine the question of the suit being barred by limitation on the facts pleaded and the evidence adduced and thereupon pass an appropriate order. It was open for the trial Judge to frame an additional issue, if required specifically on the question of the suit being barred by limitation, if the same was felt necessary by the trial Judge. Since prima facie, from the trial Court records it appears to this Court that although the claims of the plaintiff arose in the year 2006 but the suit was filed only in the year 2011. The plaint and evidence adduced do not provide sufficient materials explaining the delay caused. That not having been done, this Court is of the view that the impugned judgment and order dated 22.09.2023 must be remanded back to the trial Judge for a fresh decision on the question of limitation in the face of the specific defence raised by the defendants. The

impugned judgment and order dated 22.09.2023 stands interfered with, set aside and also the decree dated 22.09.2023 is also set aside. The Civil Suit No.101 of 2011 is restored to file and remanded back to the Civil Judge (Senior Division) – III redecide the suit by framing a specific issue on the question of limitation in terms of Order XLI, Rule 23 read with Rule 23A. The present appeal is accordingly, allowed and disposed of.

47] The trial Court records are also transmitted through the Registry of the Court. No order as to cost.

48] Pending Interlocutory Application, if any also dismissed.

49] Interim order, if any, stands merged.

JUDGE

Comparing Assistant