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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 28.02.2017

+ C.R.P. 181/2016 and CM No. 41611/2016 (stay)

AJIT SINGH SUDAN

..... Petitioner

Through Mr.Sanjay Poddar, Sr. Advocate with  
Mr.Sandeep Bajaj, Ms.Harleen Kumar, Mr.Govind  
Kumar and Mr.Sachin Gupta, Advocates.

versus

KULDEEP KAUR & Ors.

..... Respondents

Through Mr.Sharvan Dev and Mr.Kamal  
Jindal, Advocates with respondent-in-person.

**CORAM:**

**HON'BLE MR. JUSTICE JAYANT NATH**

**JAYANT NATH, J. (Oral)**

1. The present revision petition is filed under Section 115 CPC to impugn the order dated 16.07.2016 passed by the trial court dismissing the application of the petitioner under Order 7 Rule 11 CPC read with Order 12 Rule 6 CPC for dismissal of the plaint.

2. Respondent No.1/plaintiff has filed a suit for declaration, possession and permanent injunction. As per the plaint she states that she is the absolute owner of the property bearing No.C-IV/11, Amar Colony, Lajpat Nagar, New Delhi-110024. The said property was allotted to her father Late Sh. Ishwar Singh. The father had bequeathed the property in favour of respondent No.1 vide Will dated 05.11.1982. It is stated that respondent No.1 had her house constructed and developed through respondent No.2. It

is further averred that the said respondent No. 2 requested the plaintiff/respondent No.1 to take him in as a tenant at a rent of Rs. 10,000/- per month. Hence, respondent No.1 let out her property to respondent No. 2. It is further stated that respondent No.1 came to know about a forgery and fraud committed by the defendants/petitioner/respondents No. 2 to 4 when she received a letter dated 01.04.2009 from Municipal Corporation of Delhi (in short 'MCD') intimating her about an application for mutation of her property filed by some persons. It is stated that at that stage, respondent No.1 claims to have gone to respondent No.2 who told her that they had purchased the property from her on 08.01.2008. Respondent No.1 further claims that she received copies of the agreement to sell dated 08.01.2008, indemnity bond and affidavits from the Public Information Officer, MCD on 05.09.2011. Hence, the suit is filed seeking a decree of declaration that the agreement to sell dated 08.01.2008 which is registered before the Sub-Registrar is null and void and all other legal consequences. A decree of possession is also sought. Other connected reliefs are also sought.

3. The defendants/petitioner/respondents No. 2 to 4 filed this application under Order 7 Rule 11 CPC read with Order 12 Rule 6 CPC seeking dismissal/rejection of the plaint. It is claimed that the subject property was purchased by the defendants/petitioner/respondents No. 2 to 4 vide agreement to sell dated 08.01.2008 duly registered before the Sub-Registrar, GPA, SPA and Will dated 8.1.2008 were also duly registered. It is also stated that respondent No.1 has executed receipt, affidavit and bond in favour of the defendants and hence, the petitioner/defendants were put in possession of the subject property. Hence, it is urged that the suit has been filed on 28.07.2014 which is well beyond the period of limitation inasmuch

as the documents were executed on 08.01.2008. Reliance is placed on Article 58 of the Schedule to the Limitation Act to contend that no declaration that the documents are null and void can be granted to the petitioner as the relief is barred by limitation. Other grounds are also mentioned in the application but in the course of hearing before this court, these grounds have not been pressed and hence, need not be stated.

4. The trial court dismissed the application holding that it is the case of respondent No.1/plaintiff that she came to know about the alleged execution of the documents on 01.04.2009. However, the copies were received by her on 05.09.2011 in response to an RTI application. Hence, the right to sue to seek a decree of cancellation of these documents accrued on 05.09.2011 and hence, it held that the suit is within limitation. The order further noted that as the case of respondent No.1 is that the documents dated 08.01.2008 are forged and fabricated, the suit would be governed by Article 65 and not Article 58 of the Limitation Act.

5. I have heard learned counsel for the parties.

6. Learned senior counsel for the petitioner vehemently submits that the cause of action in the present case would arise on the date of the execution and registration of the documents i.e. on 08.01.2008. He further submits that respondent No.1 in the plaint admits that she received knowledge about the execution of these documents from MCD on 01.04.2009. He submits that even from the said date, the present suit is barred. Under Article 58 of the Schedule to the Limitation Act, a suit for declaration has to be filed within three years. He relies upon the judgment of the Division Bench of this Court in the case of *Minu Chibber & Ors. vs. Lt. Col. (RETD). S.S. Chibber, 2014(9) AD (Delhi) 289* and the judgment passed by me in the case of *Razia*

***Begum vs. DDA & Ors., 204(2013) DLT 295*** which judgment was upheld by the Division Bench of this court in the case of ***Razia Begum vs. DDA & Ors., 215 (2014) DLT 290 (DB)***. It is stated that even an SLP being SLP No.4397/2015 filed against the said judgment of the Division Bench was dismissed on 16.03.2015.

7. Learned counsel for respondent No. 1 has reiterated that the cause of action would arise w.e.f. the date respondent No. 1 received copies of the documents, namely, 05.09.2011. He also submits that the applicable clause of the Limitation Act would be Entry 65 to the Schedule to the Limitation Act and not Entry No. 58. He relies upon the judgment of the Supreme Court in the case of ***State of Maharashtra vs. Pravin Jethalal Kamdar, AIR 2000 SC 1099*** to support his contention.

8. Some of the facts are not disputed by the parties. Respondent No.1 does not deny about the existence of the documents relied upon by the petitioner. As per the petitioner, he purchased the property from respondent No.1 vide agreement to sell dated 08.01.2008 which was duly registered in the office of the Sub-Registrar. The photograph of respondent No.1 is duly affixed on the agreement to sell. The agreement to sell further states that respondent No.1 has received the full consideration of Rs.45 lakhs vide various cheques, details of which are stated therein, in full and final settlement of the consideration. Respondent No.1 also executed General Power of Attorney, Special Power of Attorney and Will dated 08.01.2008 which were duly registered in the office of the Sub-Registrar. She also executed receipt, affidavit and bond on the same date in favour of the petitioner. Pursuant to these documents, the petitioner is said to have been put in possession of the subject matter of the property.

9. The case of respondent No.1 is that the signatures of the respondent have been forged on these documents and the documents are sham. Regarding the payment, she does not deny receipt of the amount but she clarifies that the said payments were received through cheques regarding property No. A-17, Lajpat Nagar, New Delhi. Respondent No.1 is said to have filed an appropriate complaint on 04.11.2011 to the concerned police station and a complaint is said to be pending before the court of MM, Saket, New Delhi.

10. The documents which as per respondent No. 1/plaintiff are illegal & void documents have been allegedly executed and got registered on 08.01.2008. Respondent No. 1/plaintiff as per the plaint has received information about the execution of these documents, even assuming that she was not aware about the execution/registration of these documents, on 01.04.2009 from the Municipal Corporation of Delhi when she was intimated that an application for mutation of the property has been filed by some persons. She further states that she approached respondent No.2 who informed her that the property had been purchased by the petitioner/defendants for a consideration on 08.01.2008. She further states that the said respondent No.2 did not give her copies of the documents. These documents were received by her under RTI Act from the office of Sub-Registrar, Mehrauli and from the office of MCD on 05.09.2011. Hence, the suit is filed on 28.07.2014.

11. As per the plaint, the relevant documents are forged, fabricated and sham documents. The important date is 01.04.2009. There is no controversy surrounding this date inasmuch as in the plaint respondent No.1 admits that she received knowledge of execution of these documents on that date from

the Municipal Corporation.

12. I may first see the effect of the documents on the claims of the petitioner. No doubt, there is no registered sale deed in favour of the petitioner. However, registered agreement to sell, GPA, SPA and Will are there allegedly executed and registered by respondent No.1 in favour of the petitioner for a valuable consideration. The explanation about the consideration of Rs.45 Lakhs which admittedly has been received by respondent No. 1 is utterly vague. Why the money has been received by her for the Lajpat Nagar Property is not known. Was there a sale of the said property? No details are forthcoming or stated in the pleading. Further though it is claimed that in 2008 the property was let out, no execution of any document or rent receipt is pleaded. The entire alleged rent transaction is purportedly by oral agreement and in cash.

13. The documents as allegedly executed in favour of the petitioner as per the practice at the relevant time do confer valuable rights on the petitioner. Petitioner has received possession of the property pursuant to execution of these documents. No doubt the Supreme Court in the case of *Suraj Lamp and Industries Private Limited vs. State of Haryana and Another*, AIR 2012 SC 206 deprecated such transactions based on registered agreement to sell, GPA, SPA and Will. However, on the Supreme Court in the case of *Maya Dvi v. Lalta Prasa*, AIR 2014 SC 1356 has clarified that the judgment of *Suraj Lamp and Industries Private Limited vs. State of Haryana and Another(supra)* applies with the prospective effect. That was a case relating to registered power of attorney executed in favour of the appellant therein. The court upheld the validity of the power of attorney and the title of the appellant as follows:-

“9. In the above judgment, it has been stated that the observations made by the Court are not intended to in any way affect the validity of sale agreements and powers of attorney executed in genuine transactions. I am of the view that the Power of Attorney executed on 12.5.2006 in favour of the Appellant by the wife of Prem Chand Verma is a genuine transaction executed years before the judgment of this Court. Facts will clearly indicate that the Agreement for Sale dated 3.11.2003 was created by none other than the husband of Nirmal Verma, who had executed the General Power of Attorney and possession was handed over to the Appellant. That being the fact situation, in my view, the Objection filed by the Appellant under Order 21 Rule 58 in execution has to be allowed. I, therefore, hold that the Executing Court can execute the decree in Civil Suit No. 407 of 2007, but without proceeding against the property referred to in registered Power of Attorney dated 12.5.2006.

xxx

Vikramajit Sen, J.

11. I have perused the judgment of my learned and esteemed Brother Radhakrishnan, and I entirely and respectfully agree with his conclusion that the appeal deserves to be allowed. My learned Brother has succinctly analysed the sterling judgment in **Suraj Lamp** and Industries Private Limited v. State of Haryana (2009) 7 SCC 363, which has been rendered by a Three-Judge Bench of this Court. I completely concur with the view that since General Power of Attorney (GPA) in favour of the Appellant was executed and registered on 12.05.2006, it could not be impacted or affected by the *Suraj Lamp* dicta. Furthermore, a reading of the order of the Executing Court as well as of the High Court makes it palpably clear that both the Courts had applied the disqualification and illegality imposed upon GPAs by *Suraj Lamp*, without keeping in mind that the operation of that judgment was pointedly and poignantly prospective. This question has been dealt with by my esteemed Brother most comprehensively.”

14. For the purpose of computing limitation, the case of respondent No.1 is that it is Article 65 of the Schedule to the Limitation Act which is the relevant provision that would apply, namely, 12 years from the date when possession of the petitioner becomes adverse to respondent No.1.

15. Article 65 of the Schedule to the Limitation Act reads as follows:-

“65.	For possession of immovable property or any interest therein based on title.	Twelve years	When the possession of the defendant becomes adverse to the plaintiff.
<i>Explanation – for the purposes of this article – .....</i>			

16. Articles 56 and 58 of the Schedule to the Limitation Act read as follows:-

56.	To declare the forgery of an instrument issued or registered.	Three years	When the issue or registration becomes known to the plaintiff.
58.	To obtain any other declaration.	Three years	When the right to sue first accrues.

17. Learned counsel for respondent No.1 has relied upon the judgment of the Supreme Court in the case of ***State of Maharashtra vs. Pravin Jethalal Kamdar (supra)*** to support his contention that Article 65 of the Limitation Act will apply.

18. The facts of the said case, namely, ***State of Maharashtra vs. Pravin Jethalal Kamdar(supra)*** may be noted. That was a case in which the plaintiff therein filed a suit for declaration and possession against the State of Maharashtra. The case of the plaintiff therein was that he was not holding any land in excess of the ceiling limit as prescribed by the Urban Land (Ceiling and Regulations) Act, 1976. Hence, the plaintiff therein wanted to

sell the property to his relations with whom he entered into an agreement to sell. Under Section 27 of the said Act, he sought permission from the competent authority to sell the suit property. The competent authority exercised option to buy the property on behalf of the State of Maharashtra. Pursuant to the said order dated 26.05.1976 passed under Section 27 of the Act, a sale deed dated 23.08.1976 was executed between the plaintiff therein and the State of Maharashtra and possession was also taken over by the concerned Deputy Commissioner. In the meantime, the Supreme Court in the case of *Maharo Sahib Shri Bhim Singhji vs. Union of India, AIR 1981 SC 234*, upheld the validity of the Act except Section 27(1) which imposes the restriction on transfer of any urban land which was within the ceiling limit. In view of this decision, the plaintiff therein claimed in the suit that the order dated 26.05.1976 and the sale deed executed in favour of the State of Maharashtra was null and void and the possession taken pursuant to the above documents was illegal. The High Court passed a decree of possession in favour of the plaintiff therein. It was in those circumstances that the issue arose as to whether Article 58 of the Schedule to the Limitation Act would be applicable or Article 65. The Supreme Court held that in view of the judgment of the Supreme Court in the case of *Bhim Singhji's* case (AIR 1981 SC 234), there was no dispute that the order dated 26.05.1976 and the sale deed was without jurisdiction and was a nullity and it was not necessary for the plaintiff therein to seek a declaration about the invalidity of the said order and that the fact that the plaintiff therein sought such a declaration is of no consequences. The judgment concludes that when possession was taken by the appellant pursuant to a void document, Article 65 of the Limitation Act would apply.

19. Are the documents null and void in the present case? Meaning that respondent No.1/plaintiff need not seek a declaration that the same are null and void and can file a suit for possession straight away. In ***Md. Noorul Hoda vs. Bibi Raifunnisa and Ors., (1996) 7 SCC 767***, the Supreme Court held as follows:-

“6. The question, therefore, is as to whether Article 59 or Article 113 of the Schedule to the Act is applicable to the facts in this case. Article 59 of the Schedule to the Limitation Act, 1908 had provided inter alia for suits to set aside decree obtain by fraud. There was no specific article to set aside a decree on any other ground. In such a case, the residuary Article 120 in Schedule III was attracted. The present Article 59 of the Schedule to the Act will govern any suit to set aside a decree either on fraud or any other ground. Therefore, Article 59 would be applicable to any suit to set aside a decree either on fraud or any other ground. It is true that Article 59 would be applicable if a person affected is a party to a decree or instrument or a contract. There is no dispute that Article 59 would apply to set aside the instrument, decree or contract between the inter se parties. The question is whether in case of person claiming title through the party to the decree or instrument or having knowledge of the instrument or decree or contract and seeking to avoid the decree by a specific declaration, whether Article 59 gets attracted? As stated earlier, Article 59 is a general provision. In a suit to set aside or cancel an instrument, contract or a decree on the ground of fraud, Article 59 is attracted. The starting point of limitation is the date of knowledge of the alleged fraud. When the plaintiff seeks to establish his title to the property which cannot be established without avoiding the decree or an instrument that stands as an insurmountable obstacle in his way which otherwise binds him, though not a party, the plaintiff necessarily has to seek a declaration and have that decree, instrument or contract cancelled or set aside or rescinded. Section 31 of the Specific Relief Act, 1963 regulates suits for cancellation of an instrument which lays down that any person

against whom a written instrument is void or voidable and who has a reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, can sue to have it adjudged void or voidable and the court may in its discretion so adjudge it and order it to be delivered or cancelled. It would thus be clear that the word 'person' in Section 31 of the Specific Reliefs Act is wide enough to encompass person seeking derivative title from his seller. It would therefore, be clear that if he seeks avoidance of the instrument, decree or contract and seeks a declaration to have the decrees set aside or cancelled he is necessarily bound to lay the suit within three years from the date when the facts entitling the plaintiff to have the decree set aside, first become known to him.”

(emphasis added)

20. Similarly in the case of *Sneh Gupta vs. Devi Sarup & Ors.*, (2009) 6 SC 194 the Supreme Court held as follows:-

“67. We are concerned herein with a question of limitation. The compromise decree, as indicated hereinbefore, even if void was required to be set aside. A consent decree, as is well known, is as good as a contested decree. Such a decree must be set aside if it has been passed in violation of law. For the said purpose, the provisions contained in the Limitation Act, 1963 would be applicable. It is not the law that where the decree is void, no period of limitation shall be attracted at all. In *State of Rajasthan v. D.R. Laxmi*, (1996) 6 SCC 445, this Court held:

.....”

21. Hence, merely because respondent No.1 claims that the documents relied upon by the petitioner are null and void, does not ipso facto mean that she need not seek a declaration about these documents being void. Respondent No.1 seeks to establish her title to the suit property. She cannot establish the same without avoiding the documents relied upon by the petitioner to claim title to the property. She has to establish the said

document as void or unenforceable. Hence, respondent No.1 is bound to seek a decree of declaration before she could seek possession of the suit property. The applicable article would be Article 56 of the Act i.e. for a suit seeking declaration that the documents relied upon by the petitioner are illegal and void.

22. Reference may also be had to Section 34 of the Specific Relief Act, which reads as follows:

**“34. Discretion of court as to declaration of status or right .**

- Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation.-A trustee of property is a "person interested to deny" a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee.”

23. The Division Bench of this court in *Razia Begum v. DDA* (supra) has dealt with the above provision in similar circumstances. That was a case where the plaintiff therein filed a suit for decree of declaration declaring letter issued by DDA handing possession of the suit/flat as null and void and a decree of possession. The defendant therein took the plea that the plaintiff therein sold the flat for valid consideration and executed agreement to sell etc. Later DDA also executed a conveyance deed in favour of one of the defendants therein. This court held as follows:

“91. The learned Single Judge has relied on the pronouncement of the Andhra Pradesh High Court reported at AIR 2004 AP 29 Sannidhi Ratnavathi v. Arava Narsimhamurthy and Anr. wherein the Andhra Pradesh High Court held that in the facts of that case, as the plaintiff has lost title and interest in the suit property, the plaintiff has to avoid the said transaction by which he lost the title. Unless he avoids the said transaction in the manner known to law, he cannot become owner of the said property. He has to ask for specific relief to set aside the alienation covered by the sale deed executed by his father.

92. The Supreme Court of India had occasion to consider these very issues raised in an application under Order VII Rule 11 of the CPC in similar circumstances in the case reported at AIR 2005 SC 2897 N.V. Srinivasa Murthy and Ors. v. Mariyamma (dead) and Ors. While considering the said application, the Supreme Court held as follows:

“11. On the above averments, relief of declaring the registered sale deed dated 5.5.1953 to be a loan transaction and second relief of Specific Performance of oral agreement of reconveyance of the property by registered instrument should and ought to have been claimed in the suit. A suit merely for declaration that the plaintiffs are absolute owners of the suit lands could not have been claimed without seeking declaration that the registered sale deed dated 5.5.1953 was a loan transaction and not a real sale. The cause of action for seeking such a declaration and for obtaining re-conveyance deed according to the plaintiff's own averments in paragraph 9 of the plaint, arose on 25.3.1987 when the plaintiffs claimed to have paid back the entire loan amount and obtained a promise from the defendants to reconvey the property. Reckoning the cause of RFA(OS)No.2/2014 52 action from 25.3.1987, the suit filed on 26.8.1996, was hopelessly barred by time.

12. The averments in paragraph 12 of the plaint concerning the mutation proceedings before the revenue authorities did

not furnish any fresh cause of action for the suit and they appear to have been made as a camouflage to get over the bar of limitation. The dispute of mutation in the revenue court between the parties arose only on the basis of registered sale deed dated 5.5.1953. The orders passed by Tehsildar/Assistant Commissioner did not furnish any independent or fresh cause of action to seek declaration of the sale deed of 5.5.53 to be merely a loan transaction. The foundation of suit does not seem to be the adverse orders passed by revenue courts or authorities in mutation proceedings. The foundation of suit is clearly the registered sale deed of 1953 which is alleged to be a loan transaction and the alleged oral agreement of reconveyance of the property on return of borrowed amount.

....

14. After examining the pleadings of the plaint as discussed above, we are clearly of the opinion that by clever drafting of the plaint the civil suit which is hopelessly barred for seeking avoidance of registered sale deed of 5.5.1953, has been instituted by taking recourse to orders passed in mutation proceedings by the Revenue Courts. (Underlining by us)

93. The plaint is liable to be rejected and is not maintainable even in view of Section 34 of the Specific Relief Act and the aforenoticed legal position.”

24. The matter may be looked at from the another prospective. The case of the respondent is that she had let out the property to respondent No.2 and that respondent No.2 has thereafter in connivance with the other parties forged and fabricated documents. However, she has not filed the present suit for ejectment of a tenant. She has specifically sought a declaration that the documents in question are null and void. Clearly, the suit is not a suit simplicitor seeking possession based on title.

25. I may now come to the limitation period as prescribed for a suit for declaration i.e. Articles 56 and 58.

26. I may look at the judgment of Division Bench of this court in the case of *Minu Chibber & Ors. vs. Lt. Col. (RETD). S.S. Chibber (supra)*. The facts of that case were that one S.S.Chibber was the owner of the suit property. He died leaving behind a Will in favour of appellant/defendant No.1 therein. The plaintiff therein admits having receiving information about the Will. The Court concluded that on the death of Sh. S.S.Chibber, the plaintiff therein was informed about the Will of Sh. S.S.Chibber. This court held as follows:-

“26. Once the appellant/defendant no. 1 is admitted to have disclosed to the respondent/plaintiff of the Will of Mr. S.P.Chibber in favour of appellant/defendant no. 1 and to the exclusion of the respondent/plaintiff, it matters not whether the Will was shown to the respondent/plaintiff or not. A Single Judge of this Court in *Satya Prakash Gupta Vs. Vikas Gupta* MANU/DE/2042/2010 held that where the plaintiff was aware of the existence of the document qua which the declaration of forgery was claimed, limitation of 3 years under Article 56 would begin to run and the plea of the plaintiff of not knowing of the exact documents would be of no avail. RFA (OS) No. 23/2010 titled *Satya Prakash Gupta Vs. Vikas Gupta* preferred there against was dismissed, again emphasizing knowledge of existence of documents and observing that rules of limitation are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly and those who sleep upon their claims should not be assisted by the courts. If the respondent/plaintiff was interested in contesting the said Will, the respondent/plaintiff ought to have taken steps within the prescribed period of limitation for inspection of the said Will. The respondent/plaintiff cannot be permitted in law to so sit pretty and at his whims and fancy at any time choose to challenge the said Will. The same if permitted would lead to

titles in immovable property being never perfected at any time. We are therefore of the view that the suit insofar as for declaration of the Will as forged is also barred by time.”

27. Against the said judgment of this court, an SLP was filed being SLP No. 2068/2015 before the Supreme Court which was dismissed on 30.01.2015.

28. Similarly, in the case of **Razia Begum vs. DDA & Ors(supra)** the Division Bench of this court held as follows:-

“73. So far as the relief of declaration is concerned, the Limitation Act prescribes limitation of three years which period begins from the date when the right to sue first accrues. In this regard, we may usefully refer to the pronouncement of the Supreme Court reported at 2011 (10) Scale 190 Khatri Hotels Private Limited and Anr. V. Union of India & Anr. which has been relied upon by the learned Single Judge as well which read as follows: (para 25 and 27)

"25. Article 120 of the 1908 Act was interpreted by the Judicial Committee in Mt. Bolo v. Mt. Koklan, AIR 1930 PC 270 and it was held:

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

27. While enacting Article 58 of the 1963 Act, the legislature has designedly made a departure from the language of Article 120 of the 1908 Act. The word "*first*" has been used between the words "*sue*" and "*accrued*". This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not

*give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued."* (Emphasis supplied)

74. The learned Single Judge has also placed reliance on the pronouncement of the Supreme Court judgment reported at AIR 2010 SC 3240 *Daya Singh v. Gurdev Singh*. So far as computation of the date from which the accrual of the right to sue has to be computed, the Supreme Court referred to the decision of the Privy Council in para 7 at AIR 1930 PC 270 *Mt. Bolo v. Mt. Koklan & Ors.* The discussion by the court thereafter in paras 8 and 9 of the report are useful and read thus:

"8. A similar view was reiterated in the case of *C. Mohammad Yunus v. Syed Unnissa and Ors.*, AIR 1961 SC 808 in which this Court observed:

"the period of 6 years prescribed by Article 120 has to be computed from the date when the right to sue accrued and there could be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right."

9. In the case of *C. Mohammad Yunus (supra)*, this Court held that the cause of action for the purposes of Article 58 of the Act accrues only when the right asserted in the suit is infringed or there is at least a clear and unequivocal threat to infringe that right. Therefore, the mere existence of an adverse entry into the revenue record cannot give rise to cause of action." (Underlining by us)

80. Certainly supply or non-supply of documents by the DDA or the DDA file being not traceable is not any part of cause of action for filing the suit. It was the alleged fraud committed by Mr. Thandi in the year 1993 which gave rise to the cause of action in favour of the plaintiff."

29. The legal position that follows from the above is that the limitation does not commence from the date when the copies of the documents were received by respondent No.1 i.e. which as per the plaintiff is 05.09.2011. It would commence from the date when the plaintiff admittedly received knowledge of execution of the documents which as per the plaintiff as stated in the plaint is 01.04.2009. Plaintiff claims to have taken more than 2 years to receive copies of the documents. A party after receiving information about a fraud having been committed is obliged to act with due diligence to obtain appropriate copies of documents which he seeks to challenge. Acting in a leisurely manner to obtain the copies would not extend the period of limitation. In terms of Article 56 of the Schedule of the Limitation Act, respondent No.1 was obliged to file the suit for declaration that the documents are null and void within the period of three years from the date of such knowledge i.e. 01.04.2009. The suit being filed in 2014 is manifestly barred by limitation.

30. Accordingly, it is manifest that the impugned order suffers from material irregularity and illegality. It has misconstrued the law and the date from which the limitation period is to be computed. In the present case, the suit is patently barred by limitation and is hit by Section 3 of the Limitation Act. The settled legal position is that limitation goes to the root of the matter. If a suit is barred by limitation the court has no jurisdiction to decide the same. The Supreme Court in *Noharlal Verma vs. District Co-Operative Central Bank Limited, Jagdalpur, 2008 (14) SCC 455* held as follows:-

“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.

31. From a reading of the facts as narrated in the plaint by the respondent No.1 it is manifest that the present suit filed by respondent No.1 is barred under the Limitation Act.

32. The legal position regarding Order 7 Rule 11 CPC is that an application for rejection of a plaint can be filed if the allegations made in the plaint are taken to be correct as a whole on its face value and show that the suit is barred by law. (Reference ***Om Aggarwal vs. Haryana Financial Corporation, 2015(4) SCC 371***) In the present case based on the averments in the plaint the plaint is barred under Article 56 of the Schedule to the Limitation Act read with Section 3 of the Act. Accordingly, the impugned

order is quashed.

33. The petition is allowed. The suit of respondent No.1 stands dismissed.

34. All pending applications also stand disposed of.

**JAYANT NATH, J**

**FEBRUARY 28, 2017**

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