

(2017) 05 AHC CK 0022
In the Allahabad High Court
Case No : 529 of 2017

Chandrama Singh (Deceased) And Another
Vs

APPELLANT

Phagu Ram Verma And 6 Others

RESPONDENT

Date of Decision : 03-05-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Order 32Rule 6](#), [Order 32Rule 3](#), [Order 32Rule 15](#), [Order 32Rule 2](#), [Order 32Rule 5](#), [Order 32Rule 4](#), [Order 32Rule 1](#), [Order 32Rule 7](#), [Order 32Rule 9](#), [Order 32Rule 10](#), [Order 32Rule 11](#), [Order 32Rule 12](#), [Order 32Rule 13](#), [Order 32Rule 14](#), [Order 32Rule 8](#) -
[Limitation Act, 1963](#), [Section 3](#), [Section 59](#) - Bar of limitation

Citation : (2017) 05 AHC CK 0022

Hon'ble Judges : B. Amit Sthalekar

Bench : Single Bench

Advocate : Manoj Kumar Tewari, Uday Prakash Srivastava

Judgement

1. Heard Shri Manoj Kumar Tewari, learned counsel for the appellants and shri Uday Prakash Srivastava, learned counsel for the respondents.

2. This is the plaintiff's second appeal.

3. The plaintiffs filed suit for cancellation of the sale deed dated 22.3.1993. The plaintiff allegation was that her husband Chandrama Singh was suffering from mental illness and it is during this period that the defendant respondents herein, got a sale deed of the property in question executed in their favour from Chandrama Singh. The plaintiff allegations were denied in the written statement filed on behalf of the defendants and it was stated that at the time when the sale

deed was executed by Chandrama Singh he was in his full senses and he was not suffering from any mental disease or any other disease which might have rendered him incapacitated to execute the said sale deed. The trial court however decreed the suit on the ground that the dispute in question is not a civil dispute but rather a dispute of a criminal nature and therefore the M'Naghten principle has no application and therefore it was not necessary to call Chandrama Singh in Court and examine him and to make an assessment of his mental capability to execute the sale deed dated 22.3.1993. The trial court also held that the plaintiff has filed oral as well as documentary evidence in order to show that Chandrama Singh was undergoing treatment in the Ranchi Mental Hospital and the record keeper of the said Hospital was also examined and therefore it was held that he was undergoing treatment in the mental Hospital. It was also held that the record disclosed that as on 5.11.1988 Chandrama Singh's mental condition was not good and that for 25 days he was admitted in the mental Hospital, Ranchi. Thereafter he was again admitted in the Hospital from 13.7.1989 to 29.7.1989 and these dates are four years prior to the date of execution of the sale deed. He was also under treatment in the mental Hospital as an outdoor patient on 29.12.2001. On the second point as to whether the sale deed did not contain any consideration therefore it was invalid, the trial court has held that the defendants in the sale deed stated that Rs. 25,000/- was paid in the presence of Sub Registrar and Rs.15,000/- had already been paid prior to the execution of the sale deed whereas the plaintiff has denied the allegation. The trial court has held that the burden of proving payment of consideration lay on the defendants. The trial court has held that D.W. 1 has stated that Rs.25,000/- was paid in the presence of the Sub Registrar whereas Rs. 15,000/- was paid prior to the execution of the sale deed and the amount of Rs.25,000/- was deposited by the plaintiff Smt. Kanti Devi in the State Bank of India, Bariya Kotwa. However, D.W. 2 in his cross examination has stated that the signature on the sale deed of Chandrama Singh was made in the presence of the Sub Registrar and thereafter Chandrama Singh went to the Central Bank Raniganj Branch to deposit the money. The trial court has therefore held that since there is a difference between the amount stated to have been deposited by Chandrama Singh in his account and the two statements are at variance, therefore, the defendants have not been able to discharge the burden which lay upon them of proving that the adequate consideration had been given in respect of the sale deed. On the question of the suit being barred by time no issue was framed by the trial court.

4. Aggrieved by the judgment of the trial court the defendants filed civil appeal no. 68 of 2010 in which the appellate court framed 3 points for determination, namely, as to (i) whether no relief should have been granted to the plaintiff in view of the provisions of Order 32 Rule 15 C.P.C.; (ii) whether the sale deed dated 22.3.1993 was liable to be canceled and (iii) whether the suit was barred by time.

5. The wife of the plaintiff had given an application in the trial court on 3.3.2008 to file the suit as next friend of Chandrama Singh as Chandrama Singh was of

unsound mind and therefore incapable of seeking cancellation of the sale deed dated 22.3.1993. On this application the trial court passed an order on 3.3.2008 itself that this issue should be tested at the time of filing of the suit. However, the judgement in the suit was given on 3.9.2010 and on that date the application 3 Ga-2 was decided by the trial court holding that Smt. Kanti Devi wife of Chandrama Singh is entitled to file the suit as next friend with effect from 31.5.1999 itself i.e. date of filing the suit. The appellate court held that the trial court passed this order relying upon paper no. 45 Ga which mentioned that the mental condition of Chandrama Singh was not at all sound. Paper no. 45 Ga was filed by Smt. Kanti Devi herself before the trial court on 14.6.2003. The appellate court therefore held that if the document in respect of unsoundness of mind itself was filed in the court on 14.6.2003 the permission to file the suit with effect from 31.5.1999 did not arise and was without any basis. The appellate court further referred to the provisions of Order 32 Rule 13 C.P.C. which states that the provisions of Rule 1 to 14 (except rule 2A) shall apply to persons of unsound mind and this procedure was not adopted by the trial court rather the trial court simply on the basis of paper no. 45 Ga drew a conclusion that Chandrama Singh was of unsound mind. The appellate court also held that there was no document or notice on record before the trial court to show that Chandrama Singh was undergoing any treatment for mental illness in the year 1999. The appellate court further referred to the statement of P.W. 2 plaintiff's witness Shri Bhola Misra in cross examination wherein in paragraph 6 he has stated that he has no records available with him for the period from 1990 to 2000 with regard to the treatment or mental illness of Chandrama Singh and therefore in the circumstances there was absolutely no material before the trial court to come to the conclusion that on 22.3.1993 when the sale deed was executed Chandrama Singh was of unsound mind. The appellate court has further held that paper no. 32 Ga which is the consolidation Akar Patra dated 21.8.1993 shows that after consolidation due entries in the revenue records were made on 31.8.1993 in respect of the plaintiff as well as the other co-sharers of the property in question of which the property in question was a part and no objection was filed by the plaintiff to the order passed by the Consolidation Officer on 31.8.2013 for recording entries in the revenue record in favour of the defendants appellant. The appellate court has also held that the suit for cancellation of the sale deed dated 22.3.1993 was filed in the year 1999 i.e. 31.5.1999 and there is no satisfactory explanation to the delay of 6 years in filing the suit. The suit was barred by limitation in view of the provisions of Article 59 of the Limitation Act, 1936. The appellate court has therefore set aside the judgment and decree of the trial court.

6. Learned counsel for the appellants sought to impress upon the court that Chandrama Singh was suffering from mental illness and was also under treatment in the mental Hospital, Ranchi during the period 1988-89 and he was also an outdoor patient on 29.12.2001, therefore, a presumption would arise that he was not mentally sick on the date when he executed the sale deed dated

22.3.1993 in favour of the defendants.

7. In my opinion these are pure questions of facts but in view of the findings recorded by the appellate court that P.W.-2 record keeper Bhola Mishra who stated that there was no record available from 1990 till 2000 to show that Chandrama Singh was suffering from mental illness I do not find any perversity in the findings recorded by the appellate court. Besides I also find that the provisions of Order 32 Rule 15 C.P.C. have been completely ignored by the trial court. The Order 32 Rule 15 C.P.C. reads as under: "ORDER XXXII

Suits by or against Minors and Persons of Unsound Mind

1. Minor to sue by next friend.- Every suit by a minor shall be instituted in his name by a person who in such suit shall be called the next friend of the minor.

1[Explanation.- In this Order, "minor" means a person who has not attained his majority within the meaning of Section 3 of the Indian Majority Act, 1875 (9 of 1875), where the suit relates to any of the matters mentioned in clauses (a) and (b) of Section 2 of that Act or to any other matter.]

2. Where suit is instituted without next friend, plaint to be taken off the file.- (1) Where a suit is instituted by or on behalf of a minor without a next friend, the defendant may apply to have the plaint taken off the file, with costs to be paid by the pleader or other person by whom it was presented.

(2) Notice of such application shall be given to such person, and the Court, after hearing his objections (if any) may make such order in the matter as it thinks fit.

2-A. Security to be furnished by next friend when so ordered.-

(1) Where a suit has been instituted on behalf of the minor by his next friend, the Court may, at any stage of the suit, either of its own motion or on the application of any defendant, and for reasons to be recorded, order the next friend to give security for the payment of all costs incurred or likely to be incurred by the defendant.

(2) Where such a suit is instituted by an indigent person, the security shall include the Court fees payable to the Government.

(3) The provisions of Rule 2 of Order XXV shall, so far as may be, apply to a suit where the Court makes an order under this rule directing security to be furnished.]

3. Guardian for the suit to be appointed by Court for minor defendant.- (1) Where the defendant is a minor, the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor.

(2) An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff.

(3) Such application shall be supported by an affidavit verifying the fact that the

proposed guardian has no interest in the matters in controversy in the suit adverse to that of the minor and that he is a fit person to be so appointed.

(4) No order shall be made on any application under this rule except upon notice 1[* * *] to any guardian of the minor appointed or declared by an authority competent in that behalf, or, where there is no such guardian, 2[upon notice to the father or where there is no father, to the mother, or where there is no father or mother, to other natural guardian] of the minor, or, where there is 3[no father, mother or other natural guardian], to the person in whose care the minor is, and after hearing any objection which may be urged on behalf of any person served with notice under this sub-rule.

(4-A) The Court may, in any case, if it thinks fit, issue notice under sub-rule (4) to the minor also.]

(5) A person appointed under sub-rule (1) to be guardian for the suit for a minor shall, unless his appointment is terminated by retirement, removal or death, continue as such throughout all proceedings arising out of the suit including proceedings in any Appellate or Revisional Court and any proceedings in the execution of a decree.]

HIGH COURT AMENDMENTS

Allahabad.- (I) in Rule 3 - Delete full stop at the end of sub-rule (3) and add the following namely.

"and shall also contain the names and addresses of all guardians including any guardian of the minor appointed or declared by an authority competent in that behalf, or the father or the other natural guardian of the minor, or where there is no father or other natural guardian the person in whose care the minor is." (1-6-1957).

(ii) for sub-rule (4) (as it is in the body of the Code without any Proviso) substitute the following, namely.

"(4) The Court shall cause notice of such application to be served upon the minor as also upon all the probable guardians named in the application and such other person as it may deem fit calling upon them to file objections, if any, to the appointment of the proposed or any other probable guardian as guardian of the minor. In case any person himself desires to be appointed guardian of the minor instead of the proposed guardian, he shall furnish an affidavit verifying the fact that he has no interest in the matter in controversy in the suit adverse to that of the minor and that he is a fit person to be so appointed.

The Court shall after hearing the objections, if any, considering the respective claims of all persons, desirous of being appointed guardian including the proposed guardian, appoint such person as guardian of the minor as it may deem fit."

(iii)to sub-rule (4), add the following, namely:

"Provided that if the minor is under twelve years of age no such notice shall be issued to him."

3-A. Decree against minor not to be set aside unless prejudice has been caused to his interests.- (1) No decree passed against a minor shall be set aside merely on the ground that the next friend or guardian for the suit of the minor had an interest in the subjectmatter of the suit adverse to that of the minor, but the fact that by reason of such adverse interest of the next friend or guardian for the suit, prejudice has been caused to the interests of the minor, shall be a ground for setting aside the decree.

(2) Nothing in this rule shall preclude the minor from obtaining any relief available under any law by reason of the misconduct or gross negligence on the part of the next friend or guardian for the suit resulting in prejudice to the interests of the minor.]

4. Who may act as next friend or be appointed guardian for the suit.- (1) Any person who is of sound mind and has attained majority may act as next friend of a minor or as his guardian for the suit:

Provided that the interest of such person is not adverse to that of the minor and that he is not, in the case of a next friend, a defendant, or, in the case of a guardian for the suit, a plaintiff.

(2) Where a minor has a guardian appointed or declared by competent authority, no person other than such guardian shall act as the next friend of the minor or be appointed his guardian for the suit unless the Court considers, for reasons recorded, that it is for the minor's welfare that another person be permitted to act or be appointed, as the case may be.

(3) No person shall without his consent 1[in writing] be appointed guardian for the suit.

(4) Where there is no other person fit and willing to act as guardian for the suit, the Court may appoint any of its officers to be such guardian, and may direct that the costs to be incurred by such officer in the performance of his duties as such guardian shall be borne either by the parties or by any one or more of the parties to the suit, or out of any fund in Court in which the minor is interested 2[or out of the property of the minor] and may give directions for the repayment or allowance of such costs as justice and the circumstances of the case may require.

HIGH COURT AMENDMENTS

Allahahad.-(a) In Order XXXII, for rule 4, substitute the following Rule, namely,:

"4(1) Where a minor has a guardian appointed or declared by competent authority an person other than such guardian shall act as next friend except by leave of the Court.

(2) Subject to the provisions of sub-rule (1) any person who is of sound mind and has attained majority may act as next friend of a minor unless the interest of such person is adverse to that of the minor or he is a defendant or the Court for other reasons to be recorded considers him unfit to act.

(3) Every next friend shall except as otherwise provided by clause (5) of this rule be entitled to be reimbursed from the estate of the minor any expenses incurred by him while acting for the minor.

(4) The Court may in its discretion for reasons to be recorded award cost of the suit or compensation under Section 85-A or Section 95 against the next friend personally as if he were a plaintiff.

(5) Costs or compensation awarded under clause (4) shall not be recoverable by the guardian from the estate of the minor unless the decree expressly directs that they shall be so recoverable,"

(b) after rule 4, insert the following rule, namely:-

4A(1) Where a minor has a guardian appointed by competent authority no person other than such guardian shall be appointed his guardian for the suit unless the Court considers, for reasons to be recorded, that it is for the minor's welfare that another person be appointed.

(2) Where there is no such guardian or where the Court considers that such guardian should not be appointed it shall appoint as guardian for the suit the natural guardian of the minor, if qualified, or where there is no such guardian the person in whose care the minor is, or any other suitable person who has notified the Court of his willingness to act or failing any such person, an officer of the Court.

Explanation - An officer of the Court shall for the purposes of this subrule include a legal practitioner on the roll of the Court.

5. Representation of minor by next friend or guardian for the suit. - (1) Every application to the Court on behalf of a minor, other than an application under Rule 10, sub-rule (2), shall be made by his next friend or by his guardian for the suit.

(2) Every order made in a suit on any application, before the Court in or by which a minor is in any way concerned or affected, without such minor being represented by a next friend or guardian for the suit, as the case may be, may be discharged, and, where the pleader of the party at whose instance such order was obtained knew, or might reasonably have known, the fact of such minority, with costs to be paid by such pleader.

6. Receipt by next friend or guardian for the suit of property under decree for minor.- (1) A next friend or guardian for the suit shall not, without the leave of the Court, receive any money or other movable property on behalf of a minor either-

(a) by way of compromise before decree or order, or

(b) under a decree or order in favour of the minor.

(2) Where the next friend or guardian for the suit has not been appointed or declared by competent authority to be guardian of the property of the minor, or, having been so appointed or declared, is under any disability known to the Court to receive the money or other movable property, the Court shall, if it grants him leave to receive the property, require such security and give such directions as will, in its opinion, sufficiently protect the property from waste and ensure its proper application:

1[Provided that the Court may, for reasons to be recorded, dispense with such security while granting leave to the next friend or guardian for the suit to receive money or other movable property under a decree or order, where such next friend or guardian-

(a) is the manager of a Hindu undivided family and the decree or order relates to the property or business of the family; or

(b) is the parent of the minor.]

7. Agreement or compromise by next friend or guardian for the suit.- (1) No next friend or guardian for the suit shall, without the leave of the Court, expressly recorded in the proceedings, enter into any agreement or compromise on behalf of a minor with reference to the suit in which he acts as next friend or guardian.

(1-A) An application for leave under sub-rule (1) shall be accompanied by an affidavit of the next friend or the guardian for the suit, as the case may be, and also, if the minor is represented by a pleader, by the certificate of the pleader, to the effect that the agreement or compromise proposed is, in his opinion, for the benefit of the minor:

Provided that the opinion so expressed, whether in the affidavit or in the certificate shall not preclude the Court from examining whether the agreement or compromise proposed is for the benefit of the minor.]

(2) Any such agreement or compromise entered into without the leave of the Court so recorded shall be voidable against all parties other than the minor.

8. Retirement of next friend.- (1) Unless otherwise ordered by the Court, a next friend shall not retire without first procuring a fit person to be put in his place and giving security for the costs already incurred.

(2) The application for the appointment of a new next friend shall be supported by an affidavit showing the fitness of the person proposed and also that he has no interest adverse to that of the minor.

9. Removal of next friend.- (1) Where the interest of the next friend of a minor is adverse to that of the minor or where he is so connected with a defendant whose interest is adverse to that of the minor as to make it unlikely that the minor's

interest will be properly protected by him, or where he does not do his duty, or, during the pendency of the suit, ceases to reside within 1[India], or for any other sufficient cause, application may be made on behalf of the minor or by a defendant for his removal; and the Court, if satisfied of the sufficiency of the cause assigned, may order the next friend to be removed accordingly, and make such other order as to costs as it thinks fit.

(2) Where the next friend is not a guardian appointed or declared by an authority competent in this behalf, and an application is made by a guardian so appointed or declared, who desires to be himself appointed in the place of the next friend, the Court shall remove the next friend unless it considers, for reasons to be recorded by it, that the guardian ought not to be appointed the next friend of the minor, and shall thereupon appoint the applicant to be next friend in his place upon such terms as to the costs already incurred in the suit as it thinks fit.

10. Stay of proceedings on removal, etc., of next friend.- (1) On the retirement, removal or death of the next friend of a minor, further proceedings shall be stayed until the appointment of a next friend in his place.

(2) Where the pleader of such minor omits, within a reasonable time, to take steps to get a new next friend appointed any person interested in the minor or in the matter in issue may apply to the Court for the appointment of one, and the Court may appoint such person as it thinks fit.

11. Retirement, removal or death of guardian for the suit.- (1) Where the guardian for the suit desires to retire or does not do his duty, or where other sufficient ground is made to appear, the Court may permit such guardian to retire or may remove him, and may make such order as to costs as it thinks fit.

(2) Where the guardian for the suit retires, dies or is removed by the Court during the pendency of the suit, the Court shall appoint a new guardian in his place.

HIGH COURT AMENDMENT

Allahabad.- In Order XXXII, in rule 11-

(i) Delete the words "and may make such orders as to Costs as it thinks fit" occurring at the end of the said sub-rule; and

(ii) add to said sub-rule the following as proviso:

"Provided that where the guardian desires to retire without reasonable cause, the Court shall while permitting him to retire, direct that he shall pay the cost to be incurred in the appointment of a fresh guardian."

12. Course to be followed by minor plaintiff or applicant on attaining majority.-

(1) A minor plaintiff or a minor not a party to a suit on whose behalf an application is pending shall, on attaining majority, elect whether he will proceed with the suit or application.

(2) Where he elects to proceed with the suit or application, he shall apply for an order discharging the next friend and for leave to proceed in his own name.

(3) The title of the suit or application shall in such case be corrected so as to read henceforth thus:-

"A.B., late a minor, by C.D., his next friend, but now having attained majority."

(4) Where he elects to abandon the suit or application, he shall, if a sole plaintiff or sole applicant, apply for an order to dismiss the suit or application on repayment of the costs incurred by the defendant or opposite party or which may have been paid by his next friend.

(5) Any application under this rule may be made ex parte; but no order discharging a next friend and permitting a minor plaintiff to proceed in his own name shall be made without notice to the next friend.

13. Where minor co-plaintiff attaining majority desires to repudiate suit.- (1) Where a minor co-plaintiff on attaining majority desires to repudiate the suit, he shall apply to have his name struck out as co-plaintiff; and the Court, if it finds that he is not a necessary party, shall dismiss him from the suit on such terms as to costs or otherwise as it thinks fit.

(2) Notice of the application shall be served on the next friend, on any co-plaintiff and on the defendant.

(3) The cost of all parties of such application, and of all or any proceedings theretofore had in the suit, shall be paid by such persons as the Court directs.

(4) Where the applicant is a necessary party to the suit, the Court may direct him to be made a defendant.

14. Unreasonable or improper suit.- (1) A minor on attaining majority may, if a sole plaintiff, apply that a suit instituted in his name by his next friend be dismissed on the ground that it was unreasonable or improper.

(2) Notice of the application shall be served on all the parties concerned; and the Court, upon being satisfied of such unreasonableness or impropriety, may grant the application and order the next friend to pay the costs of all parties in respect of the application and of anything done in the suit, or make such other order as it thinks fit.

15. Rules 1 to 14 (except Rule 2-A) to apply to persons of unsound mind.- Rules 1 to 14 (except Rule 2-A) shall, so far as may be, apply to persons adjudged, before or during the pendency of the suit, to be of unsound mind and shall also apply to persons who, though not so adjudged, are found by the Court on enquiry to be incapable, by reason of any mental infirmity, of protecting their interest when suing or being sued.

8. Rule 15 clearly provides that the provisions of Rule 1 to 14 except rule 2A would apply in the case of a person of unsound mind before a suit can be

instituted by the next friend of such person. Order 32 Rule 3 C.P.C. provides for appointment of a guardian in the suit of minor defendant. Sub Rule (3) of Order 32 (Allahabad amendment) further provides that such application shall contain names and addresses of all probable guardians including any guardian of the minor appointed or declared by an authority competent in that behalf, or the father or the other natural guardian of the minor or where there is no father or other natural guardian the person in whose case the minor is. Sub Rule (4) of Order 32 (Allahabad amendment) provides that the Court shall cause notice of such application to be served upon the minor as also upon all the probable guardians named in the application and such other persons as it may deem and the court shall after hearing the objection, if any, and considering the respective claim of all persons appoint a person as guardian of a minor as it may deem fit. Rule 15 of Order 32 C.P.C. postulates that the provisions of Rule (1) to (14) will also apply to persons of unsound mind.

9. In the present case it is noticed that the trial court has not conducted any such enquiry or followed the provisions of Order 32 Rule (1) to (14) before decreeing the suit. So far as the suit being barred by time it is necessary to look at the averments of the plaint. In paragraph 6 of the plaint the plaintiff has stated that she applied for the certified copy of the sale deed dated 22.3.1993 and received the same on 26.5.1999 and it is then that she came to know that the sale deed was a fraudulent document. The first question that would arise is what occasioned the plaintiff to move an application to obtain the certified copy of the sale deed dated 22.3.1993 which fact has not been disclosed by the plaintiff in her plaint. How would the plaintiff one fine morning out of the blue submit an application seeking certified copy of the sale deed from the office of the Sub Registrar unless she had prior knowledge that such a sale deed already existed. The other aspect of the matter has been dealt by the lower appellate court that in the consolidation proceedings on the basis of the sale deed an order was passed by the Consolidation Officer on 31.8.2013 whereupon the name of defendants were entered in the revenue records which order was never challenged by the plaintiff appellants herein and therefore the plaintiff's suit was clearly barred by limitation as provided in Article 59 of the Limitation Act, 1936. As already noted above when the suit was filed it was the duty of the trial court to find out as to whether the same was within time and not barred by the provisions of Article 59 of the Limitation Act, 1936. The law is well settled that even if the plea of limitation is not raised by the defendant it is the duty of the court to examine whether the suit is barred by time and if so there is a duty cast upon the court not to proceed with the suit and dismiss it on the ground of limitation. Section 3 of the Limitation Act 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.

(2) For the purposes of this Act-

(a) a suit is instituted-

(i) in an ordinary case, when the plaint is presented to the proper officer;

(ii) in the case of a pauper, when his application for leave to sue as a pauper is made; and

(iii) in the case of a claim against a company which is being wound up by the court, when the claimant first sends in his claim to the official liquidator;

(b) any claim by way of a set off or a counter claim, shall be treated as a separate suit and shall be deemed to have been instituted- (b) any claim by way of a set off or a counter claim, shall be treated as a separate suit and shall be deemed to have been instituted-

(i) in the case of a set off, on the same date as the suit in which the set off is pleaded;

(ii) in the case of a counter claim, on the date on which the counter claim is made in court;

(c) an application by notice of motion in a High Court is made when the application is presented to the proper officer of that court."

The Supreme Court in the case reported in AIR 1964 SC 1336 *Manindra Land and Building Corporation Ltd. Vs. Bhutnath Banerjee and others* has held in paragraph 9 as under:

"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 the I Schedule 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."

This court in 2014 All. CJ 393 *Pandit Mahaveer Prasad Mishra Vs. Smt. Shyama Devi and others* has held in paragraph 30 as under:

"30. Point No. 2

The law of limitation is founded on public policy and is based upon the maxim "interest reipublicae ut sit finis litium" which means that it is for the general welfare that a period be put to litigation. The idea behind it is that every legal remedy must come to an end after a fixed period of time as it is pointless to keep it alive indefinitely. The law of limitation bars the remedy after a certain period without extinguishing a right. It means though the right continues, the remedy to enforce comes to an end and it cannot be enforced by judicial process.

Section 3 of the Limitation Act mandates that every suit instituted after the prescribed period shall be dismissed even though limitation has not been set up as a defence. In other words, a Court is obliged to dismiss a suit on the ground of limitation even if no plea has been raised that it is barred by limitation provided on the face of the pleadings the Court comes to the conclusion that the suit or the relief claimed therein is beyond time and has not been instituted within the limitation prescribed.

Section 3 of the Limitation Act 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.

(2)....."

Section 3 of the Limitation Act is peremptory and it casts a duty upon the Court not to proceed with the suit, if on the face of the pleadings it is found to be presented beyond the period of limitation prescribed as has been laid down by Privy Council of Five Judges in *Maqbool Ahmad v. Omkar Narain Pratap Singh*. A three Judges Bench of the Supreme Court in *Mahindra Land and Building Corporation Ltd. v. Bhutnath Banerjee* also reiterated the above principle and held that in view of section 3 of the Limitation Act, the Court is duty bound not to proceed with the suit if it is made beyond the period of limitation. It has no other choice.

In *FCI v. Babulal Agarwal* the Apex Court reiterated that in view of section 3 of the Limitation Act it is the duty of the Court to check it at the threshold whether the relief claimed in the suit is barred by limitation and it is not necessary to raise the plea in this regard though in all fairness it is desirable to raise it."

10. In the present case it is noticed that the trial court did not even frame an issue on the question of limitation in order to consider whether the suit was barred by limitation.

11. For the reasons aforesaid the findings recorded by the court below are based upon pure facts. No substantial question of law arises in the second appeal to support the appellant's case.

12. The second appeal therefore lacks merit and is accordingly dismissed.