(2026) 08 DEL CK 4415

In the Delhi High Court, Principal Bench, New Delhi

Case No : RFA 95/2025 & 100/2025

Dinesh APPELLANT

Vs

Sushila Devi & Ors. RESPONDENT

Date of Decision : 03-08-2026

Acts Referred:
CPC — Section 96, Order VII Rule 11, 114, XLVII, 151, XLI
Cr.P.C. — Section 161, 340
IPC — Sections 420, 467, 468, 471, 120-B
Limitation Act, 1963 — Article 58, 59, 65
Indian Limitation Act, 1877 — Article 91
Limitation Act, 1908 — Article 120

Citation : 2025 INSC 1105

Hon'ble Judges : Neena Bansal Krishna, J

Bench : Single Bench

Advocate : Mr. Mukesh Birla, Ms. Anita Sahani, Mr. Shivom Garg, Mr. Vinay Goel, Mr. Anand Prakash, Ms. Varsha Arya, Mr. Satbeer, Ms. Geet Batra, Mr. Sharique Hussain, Ms. Kirti Garg, Mr. Rishab Raj Jain

Judgement

Neena Bansal Krishna, J.

1. The aforesaid **two Regular First Appeals** under Section 96 of CPC have been preferred ***against the common Order dated 06.10.2023*** passed by the learned Additional District Judge, New Delhi in the respective Suits, filed by respective Plaintiffs / Appellants (Sh. Anil Kumar and Smt. Dinesh) for *Possession, Permanent and Mandatory Injunction, Declaration, Mesne Profits and Damages, whichhave been dismissed,* ***as barred by Limitation****.*

2. ***The facts in brief***, as narrated in the respective Suits, are that Plaintiff / Appellant *Sh. Anil Kumar*, (who is *brother-in-law* of Plaintiff / Appellant Smt. Dinesh), along with his two friends namely *Sh. Ashok Kumar* and *Sh. Narender Kumar,* through one Sh. Balbir Singh Yadav, were introduced to Sh. Ashok Solanki, a well-known colonizer, who was developing land at Dabur Enclave, SR Block A, Rawta More, Jaffarpur Kalan, Najafgarh, Delhi They came to know that

the land for purchase was available.

3. Sh. Anil Kumar along with Sh. Ashok Kumar and Sh. Narender Kumar, made a visit to Sh. Balbir Singh Yadav, who on behalf of Sh. Ashok Solanki, showed them a piece of land admeasuring 300 square yards at Dabur Enclave, SR Block A, Rawta More, Jaffarpur Kalan, Najafgarh, Delhi. After due discussions, Sh. Anil Kumar, Sh. Ashok Kumar and Sh. Narender Kumar purchased the land admeasuring 300 square yards, for a total consideration of Rs.1,47,000/- @ Rs.490/- per square yard, *videRegistered GPA, Registered Will, Agreement to Sell and Receipt in the name* of Sh. Anil Kumar and his two friends, on 11.12.1998.

4. They divided the land into three Plots, namely Plot No.54 admeasuring 90 square yards; Plot Nos.55 & 56 each admeasuring 105 square yards. Soon after getting the peaceful possession of the Plots, they raised an identifying boundary wall around their respective Plots.

5. Plot No.54 came to the share of Sh. Ashok Kumar; Plot No.55 came to the share of Sh. Anil Kumar (Appellant in RFA 100/2025); and Plot No.56 came to the share of Sh. Narender Kumar. ***Plaintiff, Smt. Dinesh purchasedthe Plot No.56 (admeasuring 105 sq. yards) from Sh. Narender Kumar on 07.04.2003,****vide* registered General Power of Attorney, Will, Agreement to Sell and receipt, and took possession of the Plot.

6. Likewise, Sh. Anil Kumar remained in possession of Plot No.55.

7. **Plaintiff Smt. Dinesh** asserted that she along with her husband, **visited the suit property on 14.06.2014** and found Defendant No.1 and 2, Smt. Sushila Devi and Sh. Balwan Singh, to *be in illegal and unauthorized occupation of the suit property.* They had ***removed the boundary wall*** of her Plot as well as of Plot No.55of Sh. Anil Kumar, and had trespassed into their property illegally, without due process of law. In addition, they had also raised a wall on the property of Smt. Dinesh and Sh. Anil Kumar unauthorizedly. Smt. Dinesh informed Sh. Anil Kumar, but because of unavoidable circumstances, he was unable to visit the suit Plots, on 14.06.2014.

8. Thereafter, Plaintiff Smt. Dinesh along with her husband, went to the suit property on 15.06.2014 and requested Defendant No.1 and 2 to remove themselves from the Plots, but they refused to do so. They and Sh. Anil Kumar met the person through whom the suit property was purchased, who assured to resolve the issue within a week.

9. On 28.06.2014, Sh. Anil Kumar, not being able to find any way-out, made an online Complaint of illegal trespass and forgery of documents, against Defendant No.1 and 2.

10. In July, 2014, Plaintiffs visited the suit property and were intimidated and threatened by Defendant No.2, for which written Complaint dated 16.07.2014 was made to the Police. On 23.07.2014, Sh. Anil Kumar along with Smt. Dinesh

and her husband, met the SHO, Jaffarpur Kalan and they went to the suit Plots and found Defendant No.1 and 2 raising unauthorized and illegal construction on the Plots. SI Nanag Ram was marked the enquiry. However, despite various follow-ups, *no action was taken by the Police.*

11. Smt. Dinesh and Shri Anil Kumar subsequently came to know that Defendant No.1 had gotten an Electricity Meter installed in the suit property, on the basis of forged and fabricated documents. Consequently, Shri Anil Kumar filed a separate Complaint with the Police.

12. Thereafter, Defendant No.1 Smt. Sushila Devi filed a ***Civil Suit bearing No.183/2014*** against Smt. Dinesh, Sh. Anil Kumar and Sh. Narender Kumar as well as the Police Officials, wherein she claimed herself to be the owner and in possession of the Plots of the two Plaintiffs, *vide*Agreement to Sell, etc. dated 08.10.2013, having purchased the Plots from one Sh. Ramphal. She also produced the previous chain of documents of the suit property, tracing back to 27.12.1989, to prove her ownership. However, Plaintiffs claimed that these documents were forged and fabricated, which Defendant No.1 and 2 had gotten prepared, in collusion with the property dealers / land grabbers.

13. On 16.09.2014, *the two Plaintiffs made a Statement before the learned Civil Judge, Dwarka Courts that they would not dispossess the Defendants without due process of law* and the ***Civil Suit No.183/2014****filed by Defendant No.1, was accordingly disposed of.*

14. ***Shri Anil Kumar made a Complaint***, on which eventually ***FIR under Sections 420/467/468/471/120-B IPC*** was registered. During the investigation, the *Investigating Officer* ***collected all the title documentsdated 27.12.1989in the name of Sh. Surat Singh,predecessor in interest of the two Plots i.e. bearing No.55 and 56 respectively*****.**

15. The Investigating Officer forwarded these alleged documents of ownership of Defendant No.1, to the Forensic Science Laboratory (FSL).

16. **FSL Report was submitted**, wherein it was stated that the Stamp Papers on which the documents were executed, was printed in 1994, while the date of execution on the documents, was 1989. *FSL also found the signatures on these documents to be forged and fabricated.*

17. The statement of *Sh. Ashok Solanki was recorded under Section 161 Cr.P.C., who stated that he had executed documents dated 11.12.1998 in favour of Sh. Anil Kumar and Sh. Narender Kumar and denied executing any documents on 27.12.1989.* He not only denied his signatures, but also denied having received any sale consideration of Rs.30,000/-, from Defendant No.1.

18. Likewise, *statement of Sh. Balbir Singh was also recorded under Section 161 Cr.P.C.*

19. **Chargesheet under Sections 420/467/468/471/120B IPC***was filed*

against Defendant No.1 / Smt. Sushila Devi, Defendant No.2 Sh. Balwan Singh and other land grabbers / conspirators.

20. Defendant No.2*Sh. Balwan Singh,* consistently threatened Sh. Anil Kumar to withdraw the case or to face consequences. Consequently, Smt. Dinesh and Sh. Anil Kumar got scared and frightened and were under a shock for a few days. They made a Complaint dated 22.11.2014 to DCP, South West Range, Dwarka, Delhi, but no action was taken.

21. Then, *Shri Anil Kumar filed a Complaint in PGC Cell, Delhi Government* against the inaction on the part of various Departments, but no action was taken. However, Defendant No.4 / The Business Manager of BSES Rajdhani Power Limited, Jaffarpur Division, New Delhi, *filed a false Report in PGC that there was no Meter installed in the suit property, which reflects that Defendant No.4 was also hand in glove with Defendant No.1 and 2.*

22. Smt. Dinesh applied for registration of property under PM Uday Yojana, on 17.10.2022. A person from DDA made a visit to the suit property on 06.11.2022, but was obstructed by Defendant No.1 and 2, who did not allow any survey. Again, a Complaint dated 06.11.2022 was made to the SHO. Another Complaint was made on 11.11.2022 to SDMC, in regard to unauthorized construction carried out on the suit plots.

23. Plaintiffs Smt. Dinesh and Sh. Anil Kumar further stated that Defendant No.1 and 2 were trying to sell the suit Plots and create third party interest.

24. The Plaintiffs, therefore, filed the **respective** ***Suits for Possession of the Suit Plots,Declaration*** *that the documents namely GPA, Agreement to Sell etc. dated 27.12.1989 and 08.10.2013 be declared null and void;* ***Permanent Injunction*** *for restraining Defendant No.1 and 2 from creating third party rights;* ***Mandatory Injunction*** *directing Defendant No.3 to remove the unauthorized construction from the Suit Plots.*

25. ***Mandatory Injunction*** *was also sought for giving directions to Defendant No.4 / Business Manager of BSES Rajdhani Power Limited, Jaffarpur Division, New Delhi, to remove the Electricity Connection installed in the name of Defendant No.1 in the Suit Plots****.***

26. ***Damages of Rs.4,60,000/-*** *for illegally removing the boundary wall of the Plaintiffs were also claimed.* ***Mesne profits in the sum of Rs.15,000/-per month were also sought*** *for illegal use and occupation of the Suit Property for the last 36 months amounting to Rs.5,40,000/- and further Mesne profits were claimed from Defendant No.1 and 2 till the Suit Property was vacated.*

27. In both Suits, **Defendant No.1 Smt. Sushila Devi and Defendant No.2 Sh. Balwan Singh, in their Joint Written Statement** took the *preliminary objections that the Plaints* ***did not disclose any cause of action****; that it was* ***an abuse of process of law*** *and that the* ***Suit was hopelessly barred by limitation.***

28. It was contended that the documents under challenge, in favour of the Defendants, are dated 08.10.2013, but the Suit has been filed after more than 10 years. It was further contended that the Suit suffers *from misjoinder of parties as Defendant No.3 / Commissioner of MCD, Civic Centre, Minto Road, New Delhi and Defendant No.4 /* Business Manager of BSES Rajdhani Power Limited, Jaffarpur Division, New Delhi, are neither necessary nor proper parties.

29. It was further asserted that the Plaintiffs are challenging the documents of Sh. Surat Singh dated 27.12.1989, who had purchased the property from Sh. Ashok Solanki. There is an inordinate delay of more than 34 years.

30. It is further asserted that the Suit is bad *for non-joinder of Sh. Surat Singh*, whose title documents dated 27.12.1989 have been challenged, but he has not been made a party. It is also submitted that there is concealment of material facts.

31. It was further submitted that Plaintiffs have concealed that from 27.12.1989 till 08.10.2013, the Plots have been sold many times to different persons, who have not been impleaded as parties to the present Suits.

32. The facts as stated in the Plaints, are a bundle of lies and self-contradictory statements made by the Plaintiffs, who admit that they came to know about the possession of the Defendants of the suit Plots, in June, 2014 and were well aware of their title documents, but the Suits have been filed in the year 2023, after a lapse of more than eight years.

33. It was further stated that the suit property originally belonged to Sh. Ashok Solanki. From the period 1989 to 2013, the property travelled through various hands namely Sh. Mahesh Chand Kaushik, Sh. Surat Singh, Sh. Satya Prakash, Sh. Ramphal and thereafter, to Defendant No.1 and 2. However, none of these persons who were the intervening owners, have been made a party nor have their documents of sale been challenged. *The Suit is, therefore, liable to be rejected under Order VII Rule 11 CPC.*

34. Admittedly, the Plaintiff is not in possession of the suit property and is seeking possession, for which he is liable to pay ad-valorem Court fees. It is stated that the market value of the property is more than Rs.2 crore, on which *the Plaintiff is liable to pay ad-valorem Court fee*.

35. By way of the present Suit, the Plaintiff is intending to grab the property of the Defendant on the basis of forged and fabricated documents and is liable for prosecution under Section 340 Cr.P.C.

36. **On merits**, all the averments made in the Plaint are denied. It is admitted that Defendant No.1 had filed the Civil Suit No.183/2014 against the Plaintiff, wherein a Written Statement was filed by the Plaintiff, claiming himself to be the owner of the suit property. The Suit was admittedly disposed of on 16.09.2014 on the joint statement of the parties, wherein the Plaintiff undertook not to dispossess the Defendants without due process of law.

37. It is submitted that the *Suit of the Plaintiff, is liable to be dismissed*.

38. **The learned ADJ *vide* impugned Order dated 06.10.2023** noted that the Plaintiff had sought Declaration of the documents in favour of the Defendants dated 08.10.2013 and 27.12.1989, as null and void. The Declaration in regard to the documents could have been obtained within a period of three years from the date of accrual of cause of action. ***The Suit was thus, held to be barred under Article 58 of Schedule II of Limitation Act, 1963. Consequently, both the Suits were dismissed, vide separate Orders dated 06.10.2023.***

39. An Application under Section 114 read with Order XLVII and Section 151 CPC was filed ***for Review of the Judgment dated 06.10.2023 by the Appellants***. However, it was dismissed on 17.02.2024, by the learned ADJ.

40. ***Aggrieved thereby, the Plaintiffs have respectively filed the Regular First Appeals under Section 96 read with Order XLI CPC.***

41. **The grounds of challenge** are that the learned ADJ has wrongly concluded that main relief sought was Declaration and the relief of Possession was ancillary, to dismiss the Suit as barred by limitation. In fact, the Defendant No.1 and 2 / Respondent No.1 and 2 had criminally trespassed into the property of the Appellant and the limitation to claim the Possession is 12 years from the date of dispossession. *The Suit was, therefore, filed within the period of limitation.*

42. It is submitted that the learned ADJ has dismissed the Suit on a misconception and in a mechanical manner, without appreciating the facts and the relief claimed which could be decided only on merits,which required evidence.

43. The FSL Report in regard to the documents of Respondent No.1 being forged and fabricated, has not been considered. It is from the date of knowledge of the documents being fabricated, that the limitation has to be calculated for *Possession, Injunction and Damages*. There were more than one relief claimed, some of which were maintainable. The Apex court has held that even if one of the many reliefs is within limitation, then the Court is bound to decide the Suit as per law and cannot dismiss the entire Suit without proceeding in accordance with law. The Plaintiff / Appellant has suffered irreparable loss and injury.

44. Hence, the prayer is made that the impugned Order be set aside and the Suit be remanded back for trial on merits.

45. ***The Plaintiffs has filed their separate Written Submissions***, wherein essentially the grounds taken in the Appeal have been reiterated. Reliance is placed on *Suraj Lamps vs. State of Haryana*; *N. Thajudeen vs. Tamil Nadu Khadi & Village Industries Board* 2024 AIR (SC) 5641 and *Shanti Devi (Since Deceased) Through LRs vs. Jagan Devi & Ors*. SLP No.24821/2018.

46. **Written Submissions have been filed on behalf of the Respondent**, wherein while reiterating the facts as already stated above, it was submitted that the knowledge about the Possession of the Respondents and their documents

were acquired by the Appellant, on 14.06.2014. In the Suit No.183/2014 the Appellant and others had made a statement, on the basis of which the Suit was disposed of on 16.09.2014, which was not challenged and has attained finality. *The limitation thus, has to be calculated from 16.09.2014.* The Suit is rightly, dismissed as being barred by limitation.

47. Furthermore, the Defendants are the lawful owners of the suit property and are also in Possession as the owners. *There is no merit in the Appeal and the same is liable to be dismissed.*

Submissions heard and record perused.

48. The aforesaid two Appeals have been filed by the Plaintiffs respectively, who are aggrieved by the rejection of their Suit under Order VII Rule 11, essentially on the ground that the Declaration sought for declaring the sale documents dated 27.12.1989 and 08.10.2013 *vide* which the Defendant No.1 and 2 had purchased the suit property, as Null and Void, was barred by Limitation.

49. The case of the Plaintiffs is that the property admeasuring 300 sq. yds. was purchased from Sh**. Ashok Solanki, the original owner**, by Sh. Anil Kumar and his friends Sh. Narender Kumar and Sh. Ashok Kumar, *vide*Agreement to Sell etc. dated 11.12.1998. The said plot was divided into three plots; Plot No.56 admeasuring 105 sq. yds. came to the share of Sh. Narender Kumar, from whom eventually the Plaintiff, Smt. Dinesh purchased the property *vide* Agreement to Sell dated 07.04.2003. Plot No.55, admeasuring 105 sq. yds., came to the share of the Plaintiff Sh. Anil Kumar.

50. ***Defendant No.1 and 2*** have claimed that the suit property was purchased by one Sh. Surat Singh *vide* Agreement to Sell, etc. dated 27.12.1989, through a chain of intermediate transfers involving Sh. Mahesh Chand Kaushik, Sh. Satya Parkash and Sh. Ramphal, and was eventually purchased by Defendant No.1 and 2 through Agreement to Sell dated 08.10.2013 from Sh. Ramphal. Their ownership from the chain of documents, is traced *back to the original owner Sh. Ashok Solanki.*

51. *Thus, undeniably, both Plaintiffs as well as Defendants admit that the property was originally owned by Sh. Ashok Solanki and further sales have been made subsequently, through a chain of Sale documents*.

52. The first most significant aspect is that the Plaintiff, Sh. Anil Kumar, had directly purchased the suit plot from Sh. Ashok Solanki *vide* Agreement to Sell, etc. dated 11.12.1998. Likewise, Smt. Dinesh has purchased the plot from Sh. Narender Kumar, who had also directly purchased jointly with Sh. Anil Kumarfrom Sh. Ashok Solanki11.12.1998, from which the suit plot was carved out.

53. The plaintiffs had made specific averments that the documents of Sh. Surat Singh dated 27.12.1989, are patently false and fabricated. On the complaint of Sh. Anil Kumar, an FIR No.222/2014, PS Jaffarpur Kalan, was registered in

respect of these documents, which were sent to the FSL, which gave the Report dated 28.09.2016*wherein it was opined that those documents were forged and fabricated, as they were executed on the stamp papers that were printed in 1994, while the documents bore the date of 1989. It was also found that the signatures were forged and fabricated.*

54. ***The FSL Report clearly found the Documents of 1989 in favour of Sh. Surat Singh, as forged and fabricated.***

55. It is also pertinent to note that a Civil Suit No.183/2014 had been filed by Defendant No.1 for restraining the Plaintiffs from forcible dispossession, in which the Plaintiffs had made a joint statement on 16.09.2014 undertaking not to dispossess the Defendants, without due process of law. The Suit was accordingly, disposed of.

56. The Plaintiffs had further asserted that when they visited the suit property on 14.06.2014, they found that the Defendants had demolished the boundary wall of their plots and reconstructed the boundary and were in possession.

57. The plaintiffs filed their respective Suits in January 2023, with the averments that the Plaintiffs came to know about the Agreement to Sell, etc. in favour of Sh. Surat Singh dated 27.12.1989, which, according to the Plaintiffs, were forged and fabricated. Thus, the subsequent chain of Agreements to Sell including that of the Defendants who had purchased the property *vide* Agreement to Sell dated 08.10.2013, was also null and void.

58. Before adverting to the question of Limitation, it is considered imperative to explain whether the relief of Declaration or of Cancellation is the appropriate remedy, when the documents are challenged.

59. It is well established that when the plaintiff is not a party to a document, he cannot seek cancellation, but can only seek the Declaration. This principle was explained in the case of *Vellayya Konar (Died) vs. Ramaswami Konar*1939 SCC OnLine Mad. 149, wherein it was observed that it was logically impossible for a person who is not a party to a document, to ask for its cancellation. It was observed as under:

> "*When, the plaintiff seeks to establish a title in himself and cannot establish that title without removing an insuperable obstruction such as a decree to which he has been a party or a deed to which he has been a party, then quite clearly, he must get that decree or deed cancelled or declared void ?in toto?, and his suit is in substance a suit for the cancellation of the decree or deed even though it be framed as a suit for declaration. But when he is seeking to establish a title and finds himself threatened by a decree or a transaction between third parties, he is not in a position to get that decree or that deed cancelled 'in toto'. That is a thing which can only be done by parties to the decree or deed or their representatives.* ***His proper remedy therefore in order to clear the way with a view to establish his title, is to get a declaration that the decree or deed is invalid so far as he himself is concerned and he must therefore, sue for such a declaration and not [or the cancellation of the decree or deed."***

60. This aspect was succinctly explained in the case of *Suhrid Singh @ Sardool Singh vs. Randhir Singh & Ors.* 2010 (12) SCC 112, wherein it was observed as under:

> "7. *Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non est, or illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to A and B, two brothers. A executes a sale deed in favour of C. Subsequently A wants to avoid the sale. A has to sue for cancellation of the deed. On the other hand, if B, who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by A is invalid/void and non est/illegal and he is not bound by it."*

61. Likewise, in the recent case of *Hussain Ahmed Choudhury vs. Habibur Rahman,* 2025 SCC OnLine SC 892, it was held that when a person is not a party to an instrument, he would not be obliged to seek its cancellation. The reason being that such an instrument would neither be likely to affect his title nor be binding on him. However, the Plaintiff must at least seek a declaration that the instrument is not binding on him or is invalid in so far as he is concerned.

62. Therefore, it is well settled that if the plaintiff is not a party to the execution of the Document, then Declaration is the appropriate remedy. The Plaintiff was not a party to the sale documents of 1989, which are sought to be nullified, and thus the plaintiff had rightly sought Declaration and not Cancellation of the Documents.

63. **The next seminal legal question which arises** is:*whether the limitation in such a Suit for Declaration and Possession, is to be calculated under Article* ***59 of the Limitation Act as three years or is it 12 years for a Suit for Possession, under Article 65 of the Limitation Act.***

64. *The aforesaid Articles are reproduced as under:*

> 59. *To cancel or set aside Three When the facts*

	an instrumentor decree or for the rescission of a contract	years	entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first becomes known to him.
65.	For possession of immovable property or any interest therein based on title	Twelve years	When the possession of the defendant becomesadverseto the plaintiff.

65. This question was considered by the Supreme Court in the case of *Anathula Sudhakar vs. P. Buchi Reddy (Dead)by LRs and Ors*. (2008) 4 SCC 594. It was observed asunder:

> "14. *We may, however, clarify that a prayer for declaration will be necessary only if the*

denial of title by the defendant or challenge to the plaintiff?s title raises a cloud on the title of the plaintiff to the property. A cloud is said to raise over a person?s title, ***when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown****. An action for declaration, is the remedy to remove the cloud on the title to the property.* ***On the other hand, where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely denies the plaintiff's title,it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration and a suit for injunction may be sufficient.*** *Where the plaintiff, believing that defendant is only a trespasser or a wrongful claimant without title, files a mere suit for injunction, and in such a suit, the defendant discloses in his defence the details of the right or title claimed by him, which raises a serious dispute or cloud over plaintiff's title, then there is a need for the plaintiff, to amend the plaint and convert the suit into one for declaration. Alternatively, he may withdraw the suit for bare injunction, with permission of the court to file a comprehensive suit for declaration and injunction. He may file the suit for declaration with consequential relief, even after the suit for injunction is dismissed, where the suit raised only the issue of possession and not any issue of title."*

66. In *Anathula Sudhakar(supra)* the law was encapsulated, thus:

"21. *To summarize, the position in regard to suits for prohibitory injunction relating to immovable property, is as under:*

(a) *Where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.*

(b) *As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.*

(c) *But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title [either specific, or implied as noticed in Annaimuthu Thevar (supra)]. Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.*

(d) *Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straight-forward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for* *declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case."*

67. From the foregoing, it emerges that where a Plaintiff is out of possession and his title is under a cloud on account of documents set up by the Defendant, the frame of the ***Suit necessarily includes reliefs of Declaration and Possession.***

68. The question that then arises is which Article of the Limitation Act governs such a composite Suit, the three-year period prescribed for cancellation of an instrument, or the twelve-year period prescribed for a Suit for Possession based on title.

69. In *C. Mohammad Yunus vs.SyedUnissa*,1961 SCC OnLine SC 135 it was laid down by the Apex Court that in a Suit for a Declaration with further relief, the limitation would be governed by the Article governing the Suit for the relief. In fact, Suit for Declaration of Title to immovable property would not be barred, so long as the right to such property continues and subsists. When such right continues to subsist, the relief for declaration would be a continuing right and there would be no limitation for such a Suit.The principle is that the Suit for Declaration for a right, cannot be held to be barred so long as right to property subsists.

70. Therefore, even though the declaration may be sought along with possession, but if the title to seek possession is clear and subsisting, the relief of Declaration is only incidental, and the limitation would be determined as for the suit for possession.

71. In the case of *Khatri Hotels Private Limited vs. Union of India*(2011) 9 SCC 126, the Supreme Court had noted that while enacting Article 58 Limitation Act, 1963, the legislature designedly made a departure from the language of Article 120 of Limitation Act, 1908. The word "*first"* had been used between the words "*sue"* and "*accrued*". It was held that it would mean that if a Suit is based on multiple cause of action, the limitation would begin to run from the date when the right to sue, first accrued. *Where there is successive violation of a right, it would not give rise to the fresh cause of action and the limitation would be counted from the day when the right to sue, first accrued.*

72. In the case of *Rajpal Singh vs. Saroj (Deceased) through Legal Representatives,* (2022) 15 SCC 260, the Suit had been filed for cancellation of the Sale Deed and for recovery of Possession. It was held that the *main relief claimed was cancellation of Sale Deedand the relief of Possession was ancillary to the main Suit.* The limitation period was required to be considered with respect to the substantive relief of cancellation of Sale Deed, which would be three years from the date of knowledge of the Sale Deed to sought to be cancelled. *In such situation, the relief of Possession is ancillary to the Declaration sought by the*

Plaintiff. In such a case, the limitation would be three years and not 12 years for claiming the recovery of Possession. Thus, the Supreme Court heldthe Suit to be barred by limitation, as it was filed beyond the period of three years.

73. This Judgment was explained in the case of *Mallavva and Anr. Vs.KalsammanavaraKalamma (Since Dead) by Legal Heirs and Ors. 2024 SCC OnLine SC 3846*, wherein it was stated that the Plaintiff had already lost his right to get the Possession and, in this context, the substantive right was for cancellation of Sale Deed. Ordinarily when a Suit is filed for cancellation of Sale Deed and for recovery of Possession, the same would suggest that the title of the Plaintiff has already been lost by seeking to get the Sale Deed set aside, on the grounds as stated in the Plaint. The Plaintiff would be said to be trying to regain his title over the suit property and to recover the Possession. *In such circumstances, where the right is already lost, the period of limitation would be three years and not 12 years.*

74. ***T****herefore, it is well explained that where****a sale document validly executed in the name of defendant, is sought to be challenged and also to seek possession, the relief of Declaration being the main relief*** *and possession would follow only if the plaintiff succeeds in getting a Declaration in his favour,* ***the limitation would be calculated as per the main relief of Declaration, which would be three years from the date of knowledge, as per Article 58 of Schedule I to the Limitation Act, 1963.***

75. ***The other situation*** is when would the Declaration for seeking Possession, not be mandatorily required.

76. In the case of *Unni vs. Kunchi Amma*, 1890 SCC OnLine Mad. 5, it was held that where a deed is executed by a person not having authority to execute it, or having such authority under certain circumstances which did not exist, it is not necessary for persons who are not bound by it to sue to set it aside, as it cannot be used against them. They may treat the document as non-existent and sue for their right as if the document did not exist.

77. The same principle was distinctly laid down by the Privy Council in *Bijoy Gopal Mukherji vs. Krishna Mahishi Debi*1907 SCC OnLine PC 1, wherein the reversioner sued for declaration that a lease granted by the widow of the last male owner, was not binding on him and also for possession. It was objected that the omission to set aside the lease by a Suit instituted within the time limit prescribed by Article 91 of the Indian Limitation Act, 1877 (Old Act) was fatal to the Suit. It was explained that the alienation made by the widow was on the basis of claiming herself to be the owner of her husband's property. However, the ownership of the wife was subject to certain restrictions on alienation and subject to its devolving upon husband's heirs upon her death. *The Sale transaction was not absolutely void, but was voidable at the election of the reversionary heir, who may think of affirming it or may treat it as a nullity without intervention of any Court.* If he shows his election to do the latter by commencing an action for

recovery of possession of the property, there is nothing for the Court either to set aside or cancel as a condition precedent to the right of action of the reversionary heir. Though the reversionary heir had sought a declaration that the *ijara* was inoperative as against them and had also sought possession, ***but it was observed that such a relief or declaration was not necessary as they could have merely claimed possession***, leaving it to the Defendants to prove the circumstances to show that the ijara of any derivative dealings with the property were not in fact voidable, but were binding on the reversionary heirs.

78. Therefore, where the transaction is voidable at the instance of the plaintiff, then it is for the defendant to prove its validity and no declaration need be sought by the plaintiff, in which case the limitation would be as for a suit for possession and not Declaration.

79. This aspect was explained in the case of *Ningawwa vs. Byrappa* (1968) 2 SCR 797, as under:

> 80. *"The legal position will be different* ***if there is a fraudulent misrepresentation not merely as to the contents of the document but as to its character****. The authorities make a clear distinction between fraudulent misrepresentation* ***as to the character of the document*** *and fraudulent misrepresentation* ***as to the contents thereof****. With reference to the former, it has been held that the transaction is void, while in the case of the latter, it is merely voidable."*

81. *Similarly,* in *Ajudh Raj vs. Moti* (1991) 3 SCC 136 it was held by the Supreme Court that if an Order has been passed without jurisdiction, *the same can be treated as a nullity i.e. non-existent in the eyes of law and it is not necessary to set it aside; such a Suit would be governed by Article 65 Limitation Act.*

82. This aspect was further explained by the Supreme Court in the case of *Prem Singh vs. Birbal* (2006) 5 SCC 353, it was held as under:

> "(i) *First, that Article 59 of the Limitation Act, 1963 would only encompass within its fold fraudulent transactions which are* **'voidable' transactions** *and not* ***those that are 'void'****. In other words, Article 59 would apply only where an instrument is prima facie valid and not to those instruments which are presumptively invalid.*
>
> (ii) *Secondly, that when the document in question is void ab initio/ or void, a decree for setting aside the same would not be necessary since such a transaction would be non-est in the eyes of law, owing to it being a nullity.*
>
> (iii) *Thirdly, a fine distinction was drawn between fraudulent misrepresentation as regards the* ***'character of the document'*** *and* ***fraudulent misrepresentation*** *as regards the* ***'contents of a document'****. It is only in the former situation that the instrument would be void and, in the latter, it would remain voidable.* ***To put it simply, Article 59 would not govern the period of limitation in respect of a void transaction.***
>
> (iv) *Lastly, that if a deed was executed by the plaintiff when he wasa minor and it was thereby void, he had two options to file a suit to get the property conveyed thereunder i.e., he could either file the suit within 12 years of the deed or within 3 years of attaining majority."*

83. It was thus, observed that in the facts involved, the allegation was only of fraudulent mis-representation as in regard to *the contents of the document*, but no challenge was made as regards to the character of the document. *It was held that a fraudulent mis-representation as to the contents of the document, is voidable; while the mis-representation as to the character of the document, is void.*

84. In *State of Maharashtra vs. Pravin Jethalal Kamdar,* 2000 SCC OnLine SC 522, the Apex Court held that ***where the documents concerned are void and non-est, it would be enough for the Plaintiff to file a simpliciter Suit for Possession, to which Article 65 Limitation Act would be applicable.*** In the said case, the documents on the basis of which the Suit for Possession of the Plaintiff was being resisted, *were held to be void ab initio.*It was explained that once the document of title is found to be void ab initio and without jurisdiction, *it has no existence in the eyes of law*. It would not be necessary for the Plaintiff to seek a Declaration that the document was void. Such invalidity of the document can be raised during the course of the proceedingsand no separate Declaration is required.

85. In *State of Maharashtra* (supra), it was thus, held that it would be of no consequence even if the Plaintiff has made one of the prayers seeking Declaration that the Sale Deed was a nullity or invalid, since such an instrument would anyway be void. ***Consequently, it was held that the Suit for Possession, simpliciter was maintainable and the limitation would be 12 years in terms of Article 65 Limitation Act.***

86. Similarly, in the case of *Kewal Krishnan vs. Rajesh Kumar and Others*(2022) 18 SCC 489, it was reiterated that a document which is void, need not be challenged by seeking a Declaration, as the same can be set up and proved even in collateral proceedings.

87. The Supreme Court in *N. Thajudeen vs. Tamil Nadu Khadi & Village Industries Board* 2024 AIR (SC) 5641, also applied the similar principles wherein the plaintiff-donee had sought declaration and recovery of possession under a Gift Deed executed in its favour, which the defendant-donor had purportedly revoked by a subsequent Revocation Deed. *It was held that the execution of the Revocation Deed, in the given circumstances was invalid,* and that where the Suit for Possession was based on a Gift Deed, the limitation would be governed by Article 65 of the Limitation Act. In such a case, the Suit essentially is not for Declaration, but for the recovery of Possession.

88. Recently, in the case of *Shanti Devi (Since Deceased) Through LRs vs. Jagan Devi & Ors*. 2025 INSC 1105, the question of limitation where a relief of Declaration and Possession is sought, was again considered in detail.After referring to the aforesaid judgments,***it was concluded that where the sale transaction is found to be void, the Plaintiff can indeed maintain an action to obtain possession of the property on the basis of a title within***

12 years from the date of knowledge that the possession of Defendant was adverse to that of the Plaintiff. It was held that it is Article 65 of the Schedule and not Article 58 would be applicable in the given facts.

89. The consistent golden thread emerging from the aforesaid authorities is that where the instrument impugned by the Plaintiff is void as distinct from voidable, the Plaintiff is not obliged to seek its formal cancellation or Declaration, as the case may be, *and a Suit for Possession based on title is maintainable within twelve years under Article 65 of the Limitation Act.* The prayer for Declaration, if made, is neither an independent cause of action nor the substantive relief; asthe void instrument does not bind the Plaintiff. In such a Suit, the invalidity of the instrument may be established by evidence and no separate limitation attaches to that plea.

90. *Applying the aforesaid principles to the case at hand, it may be observed that whether the documents dated 27.12.1989 and 08.10.2013 set up by the Defendants are void or merely voidable,* ***is a mixed question of fact and law.*** If on evidence, those documents are found to be forged as stated in the FSL Report, **no Declaration would be mandated**, making the Suit of the plaintiff for possession simpliciter, as maintainable.

91. For the same reason, the issue of limitation hinges on the validity of documents, which can be determined only after the parties have led their evidence to prove the validity of the documents of title, projected by the Defendants. If they are found to be voidand invalid being forged, then such documents are deemed non-existent and the Suit for Possession would be maintainable for which the limitation is twelve years.If on the other hand, the documents are found to be valid then the limitation would be determined in terms of A.58 of the Schedule to the Limitation Act.

92. ***Therefore, the determination of whether the Relief of declaration is the main relief and whether the suit was barred by limitation, are mixed question of fact and law; the Suits could not have been rejected under Order VII Rule 11 CPC.***

93. It is hereby clarified that the observations made herein above, were to decide the Application under Order VII Rule 11 CPC and is not an expression on the merits of the case, which may be decided on the basis of the evidence to be led by the parties.

94. **The impugned Order dated 06.10.2023 of learned Additional District Judge is hereby, set aside. The Suits are remanded back for trial.**

95. The parties are directed to appear before learned Additional District Judge on **18.08.2026.**

