(2018) 09 BOM CK 0004

In the Bombay High Court

Case No : Second Appeal No. 457, 458 of 2015

Shri Arvind S/O Krushnarao Waghmare @ W. Arvind And Others	APPELLANT
Vs	
Baba Jasbirsing Kalsi S/O Prarasingh Kalsi And 2 Others	RESPONDENT

Date of Decision : 03-09-2018

Acts Referred:

Specific Relief Act, 1963 — Section 16(c), 19(b)
Code of Civil Procedure, 1908 — Section 100
Transfer of Property Act, 1882 — Section 55, 122, 123
Limitation Act, 1963 &mdash Section 9, Article 54
Limitation Act, 1908 &mdash Section 113

Citation : (2018) 09 BOM CK 0004

Hon'ble Judges : A.S. CHANDURKAR, J

Bench : Single Bench

Advocate : A.K. Waghmare, A.V. Khare

Final Decision : Allowed

Judgement

1. Since both these appeals arise out of common judgment of the appellate Court, the appeals are being decided by this common judgment.

2. Second Appeal No.458 of 2015 arises from the following facts.

According to the respondent nos.1 and 2 who are the original plaintiffs, land bearing Survey no.46 admeasuring about 3 Hectare 26R was owned by

the appellant nos.1 to 3.Â The said land was initially owned by the mother of the appellant no.1 and after her death, the appellant no.1Âdefendant

no.1 became its owner.Â The defendant nos.2 and 3 are the children of the daughter of one Anjanabai and they also had a right in the suit

property.Â As the plaintiffs wanted to purchase the suit property, they had approached defendant nos.1 to 3 who had shown their readiness to sell the property to the plaintiffs.Â Agreement dated 09.06.1997 was accordingly scribed by one Kamlakar Gotmare on the instructions of the defendant

nos.1 to 3.Â The total consideration agreed was Rupees Four Lakhs and an amount of Rupees Fifty Thousand was paid as earnest amount to the

defendant no.1.Â The defendant nos.1 to 3 signed the agreement and possession of the suit property came to be delivered to the plaintiffs.Â

According to the plaintiffs, a total amount of Rs.2,75,000/came to be paid by them to the defendant no.1 from time to time, the last payment being

made on 01.08.2000.Â It is further pleaded that defendant no.1 was not interested in executing the saleÂdeed despite receiving considerable amount

of consideration.Â The plaintiff no.1 and defendant nos.2 and 3 were required to challenge the mutation entries effected by the Talathi and in the

appellate proceedings, it was directed that the defendant no.1 should approach the Civil Court to resolve the dispute with regard to title.Â It is the

further case of the plaintiffs that the defendant no.1 was not interested in executing the saleÂdeed and to avoid his liability, he had filed Regular Civil

Suit No.1208 of 2004 seeking the relief of declaration and permanent injunction against the plaintiff and defendant nos.2 and 3.Â In those

proceedings, it was found that the plaintiffs were in possession of the suit property.Â During pendency of that suit, the defendant nos.2 and 3

received an amount of Rs.20,000/Â on 02.05.2005 as well as further amount of Rs.5,000/Â in cash in presence of two witnesses.Â However,

thereafter, the defendant no.1 and the defendant no.4 convinced the defendant nos.2 and 3 to change their mind and therefore, the defendant nos.1 to

3 decided to gift the suit property to the defendant no.4.Â On 05.07.2006, the defendant nos.1 to 3 made a statement on oath that there was no

dispute amongst them and that they were in possession of the suit property.Â On that basis, they executed a giftÂdeed dated 06.07.2006 in favour of

defendant no.4.Â On getting knowledge of the aforesaid giftÂdeed, the plaintiffs filed suit for specific performance of the agreement dated

09.06.1997 alongwith relief of perpetual injunction.Â Said suit was filed on 24.09.2006 being Special Civil Suit No.926 of 2006.

3. The defendant no.1 filed his written statement and denied the claim as made.Â The execution of the agreement dated 09.06.1997 as well as

receipt of amount of Rs.2,75,000/Â was denied.Â The possession of the plaintiffs was also denied.Â It was pleaded that the suit was barred by limitation.Â Assuming that there was any agreement between the defendant no.1 and the plaintiffs, the same was terminated long back and there

was no cause of action to file the suit.Â It was then pleaded that in view of giftÂdeed dated 06.07.2006, the defendant no.4 was the absolute owner

of the suit property.

The defendant no.2 in his written statement also denied the agreement in question.Â The case as pleaded by the plaintiffs was denied and the

execution of the giftÂ?deed in favour of defendant no.4 was reiterated.Â The plea of bar of limitation was also raised.

Defendant no.3 in her written statement also raised similar pleas and opposed the suit.Â The defendant no.4 also denied the case of the plaintiffs as

pleaded.Â It was his case that by virtue of giftÂdeed dated 06.07.2006, the defendant no.4 had become the absolute owner of the suit property.Â It

was also pleaded that various attempts were made by the plaintiffs to take forcible possession of the suit property.

4. The parties led evidence before the trial Court.Â After considering the same, the trial Court held that the plaintiffs had proved that the agreement

dated 09.06.1997 was a legal and valid agreement, the plaintiffs had paid an amount of Rs.2,75,000/Â to the defendant no.1 and Rs.20,000/Â to the

defendant nos.2 and 3 and the plaintiffs were in possession of the suit property.Â The suit was accordingly decreed by granting the relief of specific

performance of said agreement.Â The giftÂ deed in favour of defendant no.4 was held to be not a bona fide transaction.Â Being aggrieved, the

defendants filed Regular Civil Appeal No.656 of 2012 before the appellate Court.Â The appellate Court after considering the evidence on record

confirmed the findings recorded by the trial Court but partly modified the decree for specific performance.Â It enhanced the amount of consideration

to be paid to the defendant nos.1 to 3 by Rs.5,00,000/Â.Â The appeal came to be dismissed.Â Being aggrieved, the original defendants have filed

Second Appeal No.458 of 2015 and while admitting the said appeal, the following substantial question of law was framed:Â?

(I) Whether in the wake of mention of the date for completion of agreement i.e. execution for sale deed by 01.07.1998, which was specifically

mentioned in Exh.98 and in the wake of admission given by the plaintiffs that they did not issue any notice between 01.07.1998 and 01.07.2001, the

Courts below are right in holding that within the meaning of Article 54 of the Limitation Act, suit for specific performance of contract was filed within

limitation ?

5. Second Appeal No.457 of 2015 arises from the following facts:Â?

The plaintiff in Regular Civil Suit No.1155 of 2006 is the defendant no.4 in Special Civil Suit No.926 of 2006.Â It is his case in the said suit that he is

the owner of Khasra No.46 admeasuring 3 Hectares 26 R land by virtue of registered giftÂdeed dated 06.07.2006 executed in his favour.Â

According to the plaintiff, the donors who had executed the said giftÂdeed were related to him and out of their free will, said giftÂdeed was executed

in his favour.Â The present defendant who is plaintiff no.1 in Special Civil Suit No.926 of 2006 had sought to take forcible possession of the suit

property and hence, the aforesaid suit was filed seeking a declaration that the defendant had no right, title or interest in the suit property.Â During

pendency of the suit, as forcible possession of the suit property was taken by the defendant, the plaint was amended and the relief of delivery of

possession was sought.

6. The defendant filed his written statement and opposed the suit.Â It was pleaded that the defendant was in possession of the suit property pursuant

to the agreement dated 09.06.1997.Â He had paid

substantial amounts to the owners of the suit property and therefore, his possession was lawful.Â The alleged giftÂ?deed dated 06.07.2006 was said to

be a fraudulent document executed with a view to defeat the rights of the defendant.Â That giftÂdeed was in fact got executed by paying

consideration of Rs.3,30,000/Â to the defendant no.2 in Special Civil Suit No.926 of 2006.Â It was thus prayed that the suit was liable to be

dismissed.

7. The trial Court decided this suit alongwith Special Civil Suit No.926 of 2006 and held that the giftÂdeed dated 06.07.2006 was not bona fide and it

was prepared to defeat the claim of the defendant.Â It was further held that the plaintiff was not in exclusive possession of the suit property.Â On

that premise, the suit came to be dismissed.Â Being aggrieved, the original plaintiff filed Regular Civil Appeal No.846 of 2012 which appeal was

heard alongwith Regular Civil Appeal No.656 of 2012. By common judgment dated 12.08.2015 that appeal came to be dismissed.Â On 26.07.2018, the following substantial question of law came to be framed:Â?

(I) Whether the Courts were correct in holding that the Gift Deed dated 06/07/2006 was not a legal and valid document in view of execution of

agreement dated 09/06/1997 at ExhibitÂ?98 ?

8. Shri A.K. Waghmare, appearing in person in support of both the appeals made the following submissions:Â?

(a) The suit for specific performance as filed on 25.09.2006 was barred by limitation inasmuch as, under the agreement dated 09.06.1997, the saleÂ?

deed ought to have been executed on 01.07.1998 as was specifically agreed between the parties.Â In the light of the specific date of executing the

saleÂdeed and completing the transaction having been mentioned in the agreement at Exhibit 98, the first part of Article 54 of the Limitation Act, 1963

(for short, â??the Act of 1963â??) would be applicable.Â It was submitted that even according to the plaintiffs, there was no extension of time for

completing the transaction and therefore, the suit ought to have been filed within a period of three years from the date agreed for executing the saleÂ?

deed.Â According to the appellants, both the Courts committed an error in holding the suit to be within limitation by applying the Second Part of

Article 54 of the Act of 1963 when even according to the plaintiffs, it was not their case that time to complete the transaction was extended.Â In

absence of there being any agreement between the parties to extend the period for completing the transaction, mere payments to the defendant no.1

would not have the effect of extending the period to complete the transaction.Â In any event, those payments were prior to the expiry of the period of

three years and therefore, those payments would not assist the case of the plaintiffs to urge that the suit as filed on 25.09.2006 was within limitation.Â

It was further submitted that undue importance was given by both the Courts to the filing and pendency of Regular Civil Suit No.1208 of 2004.Â That

suit had no relevance whatsoever with the transaction in question and said suit having been filed in SeptemberÂ2004 after the period of three years

from 01.07.1998, it would not have the effect of extending the period of limitation.Â All circumstances relied upon by the plaintiffs were after the

completion of the period of three years of limitation.Â Thus, by entertaining a suit which was barred by limitation, both the Courts have exercised

jurisdiction in a time barred suit.Â In that regard, the learned counsel placed reliance on the decision in Janardhanam PrasadÂ Versus Ramdas

[(2007) 15 SCC 174].

(b) Both the Courts committed an error in exercising discretion in favour of the plaintiffs while granting the decree for specific performance. The

readiness and willingness of the plaintiffs had not been duly proved in the light of various admissions of the plaintiffs.Â The plaintiff no.1 had clearly

admitted that he had never issued any notice to the defendant nos.1 to 3 to complete the transaction and to have the saleÂdeed executed.Â Similarly,

he had also admitted that there was no evidence on record to indicate availability of the balance consideration with him.Â In absence of any steps

whatsoever being taken pursuant to the agreement dated 09.06.1997 and the suit having been filed only on 25.09.2006, both the Courts erred in

granting the relief of specific performance in favour of the plaintiffs.Â The requirements of the provisions of Section 16(c) of the Specific Relief Act

(for short, â??the said Actâ??), were not satisfied.Â The discretion having been exercised on irrelevant considerations, same was required to be

interfered with.

In that regard, the learned counsel placed reliance on the decisions in Viseshar YadavÂ VersusÂ Govind Swami [AIR 2006 Chhattisgarh 149],

Gomathinayagam Pillai & OthersÂ VersusÂ Palaniswami Nadar [AIR 1967 SC 868], Lourdu Mari DavidÂ VersusÂ Louis Chinnaya

Arogiaswamy & Others [AIR 1996 SC 2814], Messrs. Sriram Cotton Pressing Factory (P) Ltd.Â VersusÂ K.E. Narayanaswami Naidu [AIR 1965

Madras 352], Gurunath Ganesh Redkar (D) Through L.Rs.Â Versus Balkrishna Jaiwant Redkar & Another [2012 (7) ALL MR 300], H.P.

PyarejanÂ VersusÂ Dasappa (Dead) by L.Rs. & Others [AIR 2006 SC 1144], Bal Krishna & AnotherÂ VersusÂ Bhagwan Das (Dead) by

L.Rs. & Others [AIR 2008 SC 1786], Nibash Ch. Saha & AnotherÂ VersusÂ Champa Lal Ladhar [AIR 2010 Gauhati 137], M/s P.R. Deb &

AssociatesÂ Versus Sunanda Roy [AIR 1996 SC 1504], R.ChinnaduraiÂ ersusÂ S. Rajalakshmi [AIR 2004 Madras 313], N.K. Giriraja ShettyÂ

VersusÂ N.K. Parthasarathy Setty & Others [AIR 2006 Karnataka 180], Thiruvengada PillaiÂ Versus Navaneethammal & Another [AIR 2008 SC

1541], K.Nanjappa (Dead) by LRs.Â VersusÂ R.A. Hameed alias Ameersab (Dead) by LRs & Another [2015 All SCR 3053], Bondar Singh &

OthersÂ VersusÂ Nihal Singh & Others [AIR 2003 SC 1905], Boodireddy Chandraiah & OthersÂ VersusÂ Arigela Laxmi & Another [AIR 2008

SC 380], Ramlal & AnotherÂ VersusÂ Phagua & Others [AIR 2006 SC 623], Bhusawal Borough MunicipalityÂ Versus Amalgamated Electricity

Co. Ltd. Bhusawal & Another [AIR 1966 SC 1652], Smt.Thakamma MathewÂ VersusÂ M. Azamathulla Khan & Others [AIR 1993 SC 1120],

Vishwanath Sitaram AgrawalÂ VersusÂ Sarla Vishwanath Agrawal [AIR 2012 SC 2586], Smt.KanakÂ Majumdar & AnotherÂ VersusÂ

Smt.Indrani Roy & Others [AIR 2013 Calcutta 81].

(c) The execution of the giftÂdeed at Exhibit 102 dated 06.07.2006 was not disputed by the donorsÂdefendant nos.1 to 3 in Special Civil Suit No.926

of 2006 and therefore, both the Courts erred in not granting any relief in Regular Civil Suit No.1155 of 2006.Â The stand raised by the defendant in

that suit that an amount of Rs.3,30,000/Â had been given by the plaintiff to Diwakar Ugle by cheque as consideration and that cheque had been

dishonoured was rightly not accepted by the trial Court. The clear admissions given by the donors that the giftÂdeed was executed with free will in

favour of the plaintiff in Regular Civil Suit No.1155 of 2006 was sufficient to declare its execution as valid.Â No connection between the alleged

payment on that account by the plaintiff was established so as to connect the same with the said giftÂdeed.Â Both the Courts erred in not giving full

legal effectÂ to the said giftÂ?deed dated 06.07.2006.

The appellant in person also placed on record written notes of arguments which were also placed on record of the trial Court as per Exhibit 308 and it

was submitted that same be taken into consideration in support of the appeals.

9. Shri A.V. Khare, learned counsel for the respondent nos.1 and 2Âoriginal plaintiffs in the suit for specific performance while supporting the decree

for specific performance as well as dismissal of the suit based on the giftÂ?deed made the following submissions :Â?

(a) Both the Courts rightly held the suit to have been filed within limitation.Â The fact that amount of Rs.2,75,000/Â was paid from time to time with

the last payment being made on 01.08.2000 was a factor which could not be ignored.Â The further conduct of the defendant nos.2 and 3 in accepting

the amount of Rs.25,000/on 02.05.2005 coupled with the fact that there was an inter se dispute between the defendant no.1 on one side and defendant nos.2 and 3 on the other side with regard to title, it was clear that the plaintiffs were required to wait till those disputes were resolved so that a clear

title could be conveyed to the plaintiffs.Â It is only after Regular Civil Suit No.1208 of 2004 came to be withdrawn on the ground that the defendant

nos.1 to 3 had executed a giftÂdeed in favour of defendant no.4 on 06.07.2006 that there was a refusal on the part of the defendant nos.1 to 3 to

perform their part of the contract and therefore, the same gave rise to the cause of action as per the Second Part of Article 54 of the Act of 1963.Â

The finding in that regard recorded by both the Courts did not call for any interference. Moreover the agreement being with regard to sale of

immovable properties, the time could not be made essence of the agreement.Â In that regard, learned counsel place reliance on the decisions in

Saradamani KandappanÂ VersusÂ S.Rajalakshmi & Others [(2011) 12 SCC 18] and Chand Rani (Smt) (Dead) by LRs.Â VersusÂ Kamal Rani

(Smt.)(Dead) by LRs. [(1993) 1 SCC 519].

(b) The discretion to grant the relief of specific performance has been exercised by both the Courts after considering the evidence on record.Â The

defence as raised by the defendants has not been duly proved.Â All attempts were made by the defendant nos.1 to 3 to frustrate the agreement

which was clear from the deposition of defendant no.1. In the light of discretion being exercised in favour of the plaintiffs by both the Courts and that

relief having been granted after appreciating the evidence on record, same did not call for any interference under Section 100 of the Code of Civil

Procedure, 1908.Â In that regard, learned counsel placed reliance on the decisions in Santosh HazariÂ VersusÂ Purushottam Tiwari deceased by

L.Rs. [2001 (2) Mh.L.J. 786] and Gurdev Kaur & OthersÂ VersusÂ Kaki & Others [AIR 2006 SC 1975].Â It was thus submitted that in the light

of concurrent findings recorded by both the Courts, no interference with the decree as passed was called for.

(c) The giftÂdeed at Exhibit 102 had been executed merely to defeat the legal rights of plaintiffs in Special Civil Suit No.926 of 2006.Â In Regular

Civil Suit No.1208 of 2004 interim orders had been passed directing the parties to maintain status quo with regard to the possession of the suit

property.Â During pendency of that suit and when the said interim order was operating, the giftÂdeed came to be executed.Â After execution of the giftÂdeed on 06.07.2006, Regular Civil Suit No.1208 of 2004 came to be withdrawn on 07.07.2006.Â All parties were aware about the aforesaid

interim order and the giftÂdeed executed in violation thereof was thus void abÂinitio.Â The trial Court had rightly found that the said giftÂdeed was

executed only to defeat the rights of the plaintiffs in the suit for specific performance.Â Moreover, the preponderance of probabilities clearly

indicated that consideration had passed to one of the donors for the purposes of executing that giftÂdeed.Â It was thus submitted that the plaintiff in

Regular Civil Suit No.1155 of 2006 was not entitled to any relief whatsoever under the said giftÂ?deed.

10. I have heard the appellant in person as well as the learned counsel for the respondents.Â I have perused the records of the case and I have also

given due consideration to the respective submissions.

As regards substantial question of law in S.A. No.458 of 2015.

11. For considering the aspect of limitation in filing the suit for specific performance, it would be first necessary to refer to the plaint averments.Â

The said averments indicate that according to the plaintiffs on 09.06.1997 an agreement came to be executed by the defendant nos.1 to 3 for selling

the suit property to the plaintiffs for a consideration of Rs.4,00,000/Â.Â The plaintiffs paid an earnest amount of Rs.50,000/Â to the defendant

no.1.Â It is then pleaded that from time to time further payment of an amount of Rs.2,25,000/Â was made and the last payment was made on

01.08.2000.Â In paragraph 4 of the plaint, it is pleaded that in the year 2001, the plaintiff no.1 had met the defendant no.1 and had requested him to

execute the saleÂdeed.Â The defendant no.1 called the plaintiffs to the office of the SubÂRegistrar, Kalmeshwar and the plaintiffs had been to that

office with the balance consideration.Â However, only the defendant no.1 remained present at the said office and he told the plaintiffs that the

presence of defendant nos.2 and 3 was not necessary. The plaintiffs found something fishy and sought clarification from the defendant no.1 who could

not give a satisfactory explanation.Â It is further pleaded in paragraph 4 that on 31.12.2002, the defendant no.1 had telephoned the plaintiffs informing

them that he had filed the case against the defendant nos.2 and 3. Â It is pleaded that he had told the plaintiff no.1 that he would have the saleÂdeed

executed by keeping some other persons present in the place of defendant nos.2

and 3.Â In paragraph 7, it is pleaded that defendant no.1 was not

interested in executing the saledeed and to avoid his liability he had filed Regular Civil Suit No.1208 of 2004.Â In paragraph 9, it is pleaded that during

pendency of the aforesaid suit, the defendant nos.2 and 3 received the amount of Rs.20,000/Â on 02.05.2005 by executing an acknowledgment on

stamp paper.Â They also received Rs.5,000/Â in cash in presence of witnesses.Â In paragraph 15, it is pleaded that though date of execution of the

saleÂdeed was mentioned as 01.07.1998 in the agreement, as the dispute of heirship in Regular Civil Suit No.1208 of 2004 was pending and the

defendants accepted an amount of Rs.25,000/Â? from the plaintiffs, the agreement dated 09.06.1997 was still in force.Â The time was not the essence

of the

contract and the contract was still in force.Â In paragraph 17 of the plaint, it is pleaded that the cause of action firstly arose on 01.07.1998 when the

defendant nos.1 to 3 failed to execute the saleÂdeed.Â It further arose on 18.09.1997, 30.01.1999, 03.07.1999, 19.04.2000, 11.05.2000 and

01.08.2000 when part payment was received.Â Â Â It also arose in the year 2001 and on 30.12.2002.Â The cause of action was continuous during

pendency of Regular Civil Suit No.1208 of 2004.Â It further arose on 02.05.2005 when the defendant nos.2 and 3 received total amount of

Rs.25,000/Â?.Â It also arose on 05.07.2006 and 06.07.2006 when the giftdeed was executed.Â The suit has been filed on 28.09.2006.

12. As noted above, the defendants in the suit for specific performance raised a plea in their written statements that the suit was barred by

limitation.Â The agreement dated 09.06.1997 is at Exhibit 98 of the record.Â As per that agreement, the defendant nos.1 to 3 agreed to sell the suit

property to the plaintiffs for a consideration of Rs.4,00,000/Â and amount of Rs.50,000/Â was paid as earnest amount.ꢀÂꢁ Therꢀe ꢂisꢁ ꢁa ꢁspꢃecific

stipulation with regard to the date of execution of the saleÂdeed.Â The said stipulation reads as â?? Â Â . .

Â â??.Â The said stipulation when translated means that the date of the saleÂ?deed would be 01.07.1998.

13. In the light of the aforesaid agreement, the question to be considered is whether the First Part of Article 54 of the Act of 1963 would be attracted

or whether the limitation would be governed by the Second Part of Article 54.Â

As per the First Part of said Article, the time from which the period

of limitation would begin to run is from the date fixed for the performance.Â As per the Second Part where no such date is fixed, it would begin to

run when the plaintiff has notice that the performance is refused. In this regard, it would be necessary to first refer to the legal position in the matter

of applicability of Article 54 of the Act of 1963.Â In Pancharan Dhara & OthersÂ VersusÂ Monmatha Nath Maity (D) by L.R's & Another [AIR

2006 SC 2281], it has been observed in paragraph 19 as under:â??19. â?¦.....It is not in dispute that the suit for specific performance of contract

would be governed by Article 54 of the Limitation Act, 1964.Â While determining the applicability of the first or the second part of the said provision,

the court will firstly see as to whether any time was fixed for performance of the agreement of sale and if it was so fixed, whether the suit was filed

beyond the prescribed period unless any case of extension of time for performance was pleaded and established.Â When, however, no time is fixed

for performance of contract, the court may determine the date on which the plaintiff had notice of refusal on the part of the defendant to perform the

contract and in that event the suit is required to be filed within a period of three years therefrom.â??

In T.L. Muddukrishana & AnotherÂ VersusÂ Smt.Lalitha Ramchandra Rao [AIR 1997 SC 772], it has been held that for the purposes of limitation

it would begin to run from the date the parties have stipulated for performance of the contract.Â The suit is required to be filed within three years

from the date fixed by the parties under the contract.Â It has been further observed that when the case fails within the First Part of Article 54 of the

Act of 1963, the question whether or not time is the essence of the contract is not of much relevance.Â In Madina Begum & Another VersusÂ Shiv

Murti Prasad Pandey & Others [(2016) 15 SCC 322, the Honâ??ble Supreme Court after referring to the earlier decision in Ahmadsahab Abdul

Mulla (2)Â VersusÂ Bibijan [(2009) 5 SCC 462] held that the expression â??date fixed for the purposeâ? is a crystallized notion. When a date is

fixed, it means that there is a definite date fixed for doing a particular act. Â Therefore, there is no question of finding out the intention from other

circumstances.

14. From the aforesaid decisions, it becomes clear that if in the agreement, the

parties have fixed a date for performance of the contract then the

period of limitation would start to run from that date as fixed. When the First Part of Article 54 of the Act of 1963 applies, the question of time being

the essence of the contract is not very relevant.

15. In the light of aforesaid legal position, the evidence on record is required to be taken into consideration.Â The plaintiff no.1 examined himself at

Exhibit 39.Â In his evidence, he reiterated the statements made in the plaint.Â He was crossÂexamined by the defendants and it would be material

to refer to the relevant portions of his crossÂ?examination.Â Those are as under:Â?

â??It is true that said document was in my custody from 1997 till JulyÂ2003.Â I have not initiated any proceeding on the basis of said document

from 1997 till JulyÂ2003.Â I had not issued any notice to defendant nos.1 to 3 from 1997 till JulyÂ2003 on the basis of said agreement for the

performance of the condition therein.Â My said claim is based on the agreement dated 09.06.1997.Â Que.: Whether it was agreed in between

plaintiff and defendants to execute the saleÂ?deed before 01.07.1998 ?

Ans.: The said date is referred in the said agreement.

I came to know first that there was a internal dispute in between them in the year 1998.Â I cannot tell whether there was no internal dispute in

between defendant Nos.1 to 3 before 1998.Â It is not true to say that I came to know that defendant Nos.1 to 3 are practicing fraud on me in the

year 2001.Â I came to know since from 1998 that defendant Nos.1 to 3 started avoiding to perform their part of agreement.

I have not issued any notice in writing to the defendant Nos.1 to 3 from 01.07.1998 to 01.07.2001 informing him that to remain present at the SubÂ?

Registrar Office for the execution of saleÂ?deed at a particular day on failure of it I will take legal action against him.

The period of the agreement was extended after 01.07.1998.Â I do not know on which exact date it was extended.

We have not executed any other new agreement with defendant Nos.1 to 3 from 01.07.1998 till 01.07.2001.

I have not taken consent letter from defendant Nos.1 & 2 in the period commencing from 01.07.1998 till 01.07.2001 & from 01.07.2001 till 31.07.2003

with respect to their consent to the agreement.

It is not true to say that as period was not extended, hence, there was no reference accordingly in Exhibit 98.Â I have not produced any document to

show that any separate document was executed for the extension of time for period commencing from 1998 till 2003.

We have not obtained any acknowledgment in writing and also orally from the defendants for the execution of agreement for its extension from period

July1998 till 2003.

I do not remember the exact date and month in which the incident as stated by me in para 5 of the affidavit was occurred.Â I came to know at that

time that defendants were avoided to execute the saleÂdeed on the strength of agreement of sale.Â I had not taken any certificate from

SubRegistrar stating that though I was present in the office, defendants preferred to remain absent.Â I have not executed any affidavit before

Tehsildar on that day stating that though I had gone to the office of SubÂ?Registrar, defendants preferred to remain absent.

I have not filed any document so as to show that on that particular date, I myself and remaining plaintiff are having remaining consideration amount.Â

I had not issued any notice to defendant Nos.1 to 3 immediately after occurrence of said incident stating that though, I had gone to the SubÂRegistrar

Office on that particular date, defendant Nos.1 to 3 preferred to remain absent and practiced a fraud on me.Â I had not initiated legal action against

them immediately after the occurrence of said incident.Â It is not true to say that averments made by me in para 4 of the plaint and facts stated in

para 5 of my affidavit are false, fabricated one.â??

16. Thus, on considering the agreement dated 09.06.1997 at Exhibit 98 it is clear that the date for execution of the saleÂdeed was fixed as

01.07.1998.Â However, according to the plaintiff no.1 the period for executing the saleÂdeed was extended after 01.07.1998 but he was not aware

on which date it was extended.Â He admitted that the plaintiffs had not executed any other new agreement with the defendant nos.1 to 3 from

01.07.1998 till 01.07.2001.Â He further admitted that he had not produced any document to show that any separate document was executed for

extension of time for the period commencing from 1997 till 2003.Â No written or oral acknowledgment was obtained from the defendants with regard

to the extension of the period under the agreement from JulyÂ1998 till 2003.Â It is thus, clear that from the evidence on record that as per the

agreement at Exhibit 98, the parties had agreed to have the saleÂdeed executed on 01.07.1998 and that the plaintiffs failed to prove that there was

any written document or oral agreement to extend the period for completing the transaction from 01.07.1998 till 2003.

17. Though it was sought to be urged on behalf of the plaintiffs that the agreement being one for sale of immovable property, the time was not the

essence of the contract and therefore the plaintiffs waited till 25.09.2006 for filing the suit for specific performance, that contention cannot be

accepted.Â Once it is found that in view of a specific date being mentioned in the agreement for execution of the saleÂdeed, the limitation would be

governed by the First Part of Article 54 of the Act of 1963, the question as to whether time was the essence of the contract is irrelevant and the same

is not required to be considered.Â Reference in that regard can be usefully made to the decision in Sumerchand Hukumchand & OthersÂ VersusÂ

Hukumchand Mathurdas & Others [1965 MP.L.J. 829] wherein it has been held that the question as to whether time is the essence of the contract is

not at all relevant for determining whether the First or the Second Part of Article 113 of Limitation Act, 1908 would apply to a particular case.Â The

only material consideration is that when the parties have agreed to complete the transaction on a particular date specified, the limitation would be

governed by the First Part of Article 54 of the Act of 1963.

Similarly, the justification put forth by the plaintiffs that the defendants did not have a clear title and therefore in view of pendency of Regular Civil Suit

No.1208 of 2004 the plaintiffs could not have sought specific performance of the agreement in question also cannot be accepted.Â As noted above,

on the First Part of Article 54 of the Act of 1963 being applied, the limitation would expire by 01.07.2001.Â Regular Civil Suit No.1208 of 2004 has

been filed in SeptemberÂ2004 much after expiry of the period of three years even from 01.07.2001.Â Moreover, under Section 9 of the Act of 1963

once the time begins to run, it would continue to run till the completion of the prescribed period and no subsequent disability or inability to institute a suit

would stop the same. Hence, when the period of limitation commenced from 02.07.1998, it terminated on the expiry of the period of limitation and the

plea that there was a cloud on the title of the defendants or that they were not in a position to convey valid title cannot save the plaintiffs from the

operation of the rigors of the period of limitation as prescribed.Â Hence, the aforesaid contentions raised on behalf of the plaintiffs cannot be

accepted.

18. The trial Court in its judgment while discussing Issue No.8 as regards the aspect of limitation has devoted almost thirty nine paragraphs while

answering that issue and holding the suit to be within limitation. The trial Court has taken into consideration the dispute of ownership between the

defendants inter se and has held that said dispute was settled only on 06.07.2006 when Regular Civil Suit No.1208 of 2004 came to be

compromised.Â Despite noting the fact that as per the agreement, the time to complete the transaction was fixed it proceeded to apply the Second

Part of Article 54 of the Act of 1963 for holding the suit to be filed within limitation.

The appellate Court while answering the Point No.6 has also answered that point by giving importance to the inter se dispute between the defendants

as regards ownership of the suit property.Â It has referred to provisions of Section 55 of the Transfer of Property Act, 1882 to hold that the

defendants were not in a position to convey good title to the plaintiffs and until the dispute amongst them was settled, the plaintiffs were justified in not

filing the suit for specific performance.Â Further acceptance of certain amounts by the defendant nos.2 and 3 on 02.05.2005 has also been given

importance.Â As it has been found that as per the agreement, the saleÂdeed was to be executed on 01.07.1998 and even according to the plaintiff

no.1 there was no further written or oral agreement for extending the time to execute the saleÂ?deed, any subsequent payments cannot have the effect

of extending the time to complete the transaction.Â It would have been a different matter if the plaintiffs would have proved that the defendants had

agreed to extend the time to complete the contract.Â That is however not the case proved.

19. Thus, from the aforesaid discussion, it becomes clear that both the Courts wrongly interpreted the agreement at Exhibit 98 while holding the suit

filed on 25.09.2006 to be within limitation.Â In the face of clear stipulation in the agreement as regards the date fixed for execution of the saleÂdeed,

the finding recorded by both the Courts that the limitation was governed by the

Second Part of Article 54 of the Act of 1963 is perverse. In the light of

the law laid down in Bondar Singh & Others and Vishwanath Sitaram Agrawal (supra) if the Courts have recorded a perverse finding ignoring the

clear evidence on record and by misinterpreting the agreement at Exhibit 98, such perverse finding is liable to be set aside under Section 100 of the

Code of Civil Procedure, 1908.Â Though the learned counsel for the plaintiffs sought to rely upon the decision in Santosh Hazari (supra) to contend

that the findings recorded in that regard did not deserve to be set aside, it is found that the present is a case which indicates that the Courts have

ignored the clear stipulation in the agreement fixing the date for performance of the contract and have applied wrong principles for holding the suit to

be within limitation.Â Similarly, the ratio of the decision in Gurdev Kaur & Others (supra) does not assist the case of the plaintiffs as no finding of

fact is being interfered with.Â The interference is on account of wrong interpretation of the agreement at Exhibit 98 which goes to the root of the

matter.Â The following observations of the Hon'ble Supreme Court in Hero VinothÂ VersusÂ Seshammal [(2006) 5 SCC 545] would justify

interference under Section 100 of the Code.

â??24. The principles relating to Section 100 CPC relevant for this case may be summarised thus:

(i) An inference of fact from the recitals or contents of a document is a question of fact.Â But the legal effect of the terms of a document is a

question of law.Â Construction of a document involving the application of any principle of law, is also a question of law.Â Therefore, when there is

misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.

(ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law.Â A question of law having

a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question

of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves a debatable legal

issue.Â A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of

law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle.Â In the second type

of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates

the settled position of law.

(iii) The general rule is that High Court will not interfere with the concurrent findings of the courts below.Â But it is not an absolute rule.Â Some of

the wellÂrecognised exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn

wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof.Â When we refer to

â??decision based on no evidenceâ?, it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the

evidence, taken as a whole, is not reasonably capable of supporting the finding.â??

20. Accordingly, the substantial question of law as framed in Second Appeal No.458 of 2015 is answered by holding that both the Courts committed

an error in holding that the suit for specific performance was filed within limitation.

As regards substantial question of law in S.A. No.457 of 2015.

21. The plaintiff in Regular Civil Suit No.1155 of 2006 has pleaded in the plaint that he was related to the defendant nos.1 to 3 in the suit for specific

performance and that out of their free will, said giftdeed came to be executed.Â Steps were also taken to have the property mutated in the name of

plaintiff and possession was also delivered.Â The defendant however made various attempts to take forcible possession of the suit property that gave

a cause of action to file the suit for declaration that the defendant had no right or title in the suit property and a decree for permanent injunction

restraining the defendant from disturbing his possession.Â During pendency of that suit, it is the case of the plaintiff that forcible possession of the suit

property came to be taken by the defendant. The plaint was accordingly amended and a prayer for grant of possession was also made.Â In the

written statement at Exhibit 22, the entitlement of the plaintiff to the suit property on the basis of that giftÂdeed was denied. It was stated that the

donors were never in possession of the suit property and that by virtue of the agreement dated 09.06.1997, the defendant was in actual possession of the suit property.Â The giftÂdeed was a fraudulent document and it had come to the knowledge of the defendant that for the purposes of executing

that giftÂdeed, a cheque for an amount of Rs.3,30,000/Â was drawn by the plaintiff in favour of one of the donors Shri Diwakar Ugle which cheque

was dishonoured.

22. The plaintiff examined himself at Exhibit 42 and according to him as there was a settlement between the land ownersÂdonors, Regular Civil Suit

No.1208 of 2004 was withdrawn on 07.07.2006 and before that the giftÂdeed was executed.Â He admitted that he was having a bank account at the

concerned branch from which the cheque in question came to be issued.Â He however denied having issued any such cheque in favour of Diwakar

Ugle.Â The plaintiff examined two more witnesses on the aspect of his possession.Â The defendant examined himself and referred to the order of

injunction that was passed by the Court in Regular Civil Suit No.1208 of 2004 directing parties to maintain status quo.Â He denied the possession of

the plaintiff over the suit property and he also stated that the order permitting withdrawal of Regular Civil Suit No.1208 of 2004 was not challenged by

him.Â The defendant examined an officer from the Union Bank at Exhibit 175 and said witness deposed that Account No.3337 stood in the name of

the plaintiff.Â In his crossÂexamination, he stated that there was some difference in the signature on the cheque at Exhibit 153 and the account

opening form.Â He however stated that he was not aware of the purposes for which the cheque came to be issued.Â These are the pleadings and

the evidence led by the parties with regard to the giftÂ?deed at Exhibit 102.

23. The trial Court recorded a finding that the execution of the giftÂdeed was not disputed by the donors and in view of the law laid down in Surendra

KumarÂ VersusÂ Nathulal [AIR 2001 SC 2040], it was not necessary to examine an attesting witness to prove that document. It therefore held that

though the execution of the giftÂdeed was duly proved, that transaction was hit by the provisions of Section 19(b) of the said Act. The appellate Court

on the basis of preponderance of probabilities held that the cheque for an amount of Rs.3,30,000/Â was issued by the plaintiff as consideration for

execution of the giftÂdeed.Â On that count, a finding was recorded that the said giftÂdeed was not legal and valid and it was prepared with an

intention to deprive the legitimate claim of the plaintiff in the suit for specific performance.

24. On consideration of the evidence led by the parties with regard to the execution of the giftÂdeed, one of the donors Diwakar Ugle was examined

by the plaintiff in Special Civil Suit No.926 of 2006, below Exhibit 166.Â He has deposed that the giftÂdeed was prepared as per the say of the

donors and that he was aware about its contents.

Similarly, another donor Vasantrao Mukey who was examined at Exhibit 179 has also stated that the giftÂdeed was executed by free will in favour of

the plaintiff in Regular Civil Suit No.1155 of 2006 as said plaintiff was closely related.Â The other donor in her written statement has admitted

execution of the giftÂdeed.Â The giftÂdeed at Exhibit 102 indicates that it has been signed by the donors and the gift in question has been accepted

by the donee.Â The giftÂdeed is also duly registered.Â It is thus found that the necessary ingredients of Sections 122 and 123 of the Transfer of

Property Act, 1882 stand complied with.Â In fact, the trial Court has recorded a clear finding that the gift had been validly executed.Â Even in this

appeal, it was not urged that due execution of said will had not been proved.

As observed earlier, when the execution of the gift was not disputed by the donors, it was not necessary to examine any attesting witness.Â Hence,

the finding recorded that due execution of the giftÂ?deed at Exhibit 102 has been proved is based on material evidence available on record.

25. It is however the contention of the defendant in Regular Civil Suit No.1155 of 2006 that said giftÂdeed has been executed when the order of

status quo that was passed in Regular Civil Suit No.1208 of 2004 was in operation.Â Hence, said giftÂdeed was void.Â It is undisputed that during

pendency of Regular Civil Suit No.1208 of 2004 and Writ Petition No.5797 of 2005 which arose out of challenge to the interim order of injunction, the

Court had directed the parties to maintain status quo in regard to possession only.Â The said interim order related to the actual possession of the suit

property and hence, same would not preclude execution of the giftÂdeed.Â Moreover, under provisions of Section 123 of the Transfer of Property

Act, 1882, execution of a registered instrument in that regard is sufficient.Â That compliance having been done, it cannot be said that the order of

status quo that was operating in Regular Civil Suit No.1208 of 2004 in relation to the possession of the suit property was in any manner affected/breached by executing the said giftÂdeed.Â Hence, that contention cannot be accepted.Â Similarly, when it is found that the claim for

specific performance is found to be barred by the law of limitation, the question of applicability of the provisions of Section 19(b) of the said Act would

not arise so as to cause any legal impediment in upholding the said giftÂdeed.Â So also, the aspect of consideration said to be paid by the plaintiff in

favour of one of the donors has not been duly proved. The said donor has categorically refused having received any consideration whatsoever towards

execution of the said giftÂdeed.Â The observations in that regard made by the appellate Court are against the evidence on record and the same do

not support the case of the defendant.

It is thus found that due execution of the giftÂdeed at Exhibit 102 has been duly proved.Â The plaintiff in Special Civil Suit No.926 of 2006 having

filed the suit for specific performance beyond the period of limitation and the relief of specific performance having found to be now barred by

limitation, the giftÂdeed dated 06.07.2006 would be entitled to be given its legal effect.Â Accordingly, the substantial question of law as framed in

Second Appeal No.457 of 2015 is answered by holding that the Courts were not justified in holding that the giftÂdeed dated 06.07.2006 was not a

legal and valid document in view of execution of the agreement dated 09.06.1997 at Exhibit 98.

26. As a result of the aforesaid answers to the substantial questions of law, it is held that the plaintiff in Special Civil Suit No.926 of 2006 is not entitled

for the relief of specific performance as that relief has been sought beyond the limitation as prescribed by the First Part of Article 54 of the Act of

1963.Â As a consequence of the same, the giftÂ?deed dated 06.07.2006 is held to be a legal and valid document.Â Accordingly, the following order is

passed:

(I) Second Appeal No.458 of 2015 is allowed.Â The judgment in Special Civil Suit No.926 of 2006 dated 05.11.2011 as well as the judgment in

Regular Civil Appeal No.656 of 2012 dated 12.08.2015 are set aside.Â Special Civil Suit No.926 of 2006 stands dismissed as being barred by

limitation.

(II) Second Appeal No.457 of 2015 is allowed.Â The judgment in Regular Civil Suit No.1155 of 2006 dated 05.11.2011 and the judgment in Regular

Civil Appeal No.846 of 2012 dated 12.08.2015 are set aside.Â Regular Civil Suit No.1155 of 2006 is decreed in terms of prayer clauses (BÂ2) and

(BÂ3) of the plaint.Â Since the defendant in Regular Civil Suit No.1155 of 2006 is in possession of the suit property, he is granted time of three

months to deliver its possession to the plaintiff.

Decree be drawn accordingly.

(III) The parties shall bear their own costs in both the Second Appeals.

Since both these appeals arise out of common judgment of the appellate Court, the appeals are being decided by this common judgment.

2. Second Appeal No.458 of 2015 arises from the following facts.

According to the respondent nos.1 and 2 who are the original plaintiffs, land bearing Survey no.46 admeasuring about 3 Hectare 26R was owned by

the appellant nos.1 to 3.Â The said land was initially owned by the mother of the appellant no.1 and after her death, the appellant no.1Âdefendant

no.1 became its owner. Â The defendant nos.2 and 3 are the children of the daughter of one Anjanabai and they also had a right in the suit

property.Â As the plaintiffs wanted to purchase the suit property, they had approached defendant nos.1 to 3 who had shown their readiness to sell the

property to the plaintiffs.Â Agreement dated 09.06.1997 was accordingly scribed by one Kamlakar Gotmare on the instructions of the defendant

nos.1 to 3.Â The total consideration agreed was Rupees Four Lakhs and an amount of Rupees Fifty Thousand was paid as earnest amount to the

defendant no.1.Â The defendant nos.1 to 3 signed the agreement and possession of the suit property came to be delivered to the plaintiffs.Â

According to the plaintiffs, a total amount of Rs.2,75,000/came to be paid by them to the defendant no.1 from time to time, the last payment being

made on 01.08.2000.Â It is further pleaded that defendant no.1 was not interested in executing the saleÂdeed despite receiving considerable amount

of consideration.Â The plaintiff no.1 and defendant nos.2 and 3 were required to challenge the mutation entries effected by the Talathi and in the

appellate proceedings, it was directed that the defendant no.1 should approach the Civil Court to resolve the dispute with regard to title.Â It is the

further case of the plaintiffs that the defendant no.1 was not interested in executing the saleÂdeed and to avoid his liability, he had filed Regular Civil

Suit No.1208 of 2004 seeking the relief of declaration and permanent injunction against the plaintiff and defendant nos.2 and 3.Â In those

proceedings, it was found that the plaintiffs were in possession of the suit property.Â During pendency of that suit, the defendant nos.2 and 3

received an amount of Rs.20,000/Â on 02.05.2005 as well as further amount of Rs.5,000/Â in cash in presence of two witnesses.Â However,

thereafter, the defendant no.1 and the defendant no.4 convinced the defendant nos.2 and 3 to change their mind and therefore, the defendant nos.1 to

3 decided to gift the suit property to the defendant no.4.Â On 05.07.2006, the defendant nos.1 to 3 made a statement on oath that there was no

dispute amongst them and that they were in possession of the suit property.Â On that basis, they executed a giftÂdeed dated 06.07.2006 in favour of

defendant no.4.Â On getting knowledge of the aforesaid giftÂdeed, the plaintiffs filed suit for specific performance of the agreement dated

09.06.1997 alongwith relief of perpetual injunction.Â Said suit was filed on 24.09.2006 being Special Civil Suit No.926 of 2006.

3. The defendant no.1 filed his written statement and denied the claim as made.Â The execution of the agreement dated 09.06.1997 as well as

receipt of amount of Rs.2,75,000/Â was denied.Â The possession of the plaintiffs was also denied.Â It was pleaded that the suit was barred by

limitation.Â Assuming that there was any agreement between the defendant no.1 and the plaintiffs, the same was terminated long back and there

was no cause of action to file the suit.Â It was then pleaded that in view of giftÂdeed dated 06.07.2006, the defendant no.4 was the absolute owner

of the suit property.

The defendant no.2 in his written statement also denied the agreement in question.Â The case as pleaded by the plaintiffs was denied and the

execution of the giftÂ?deed in favour of defendant no.4 was reiterated.Â The plea of bar of limitation was also raised.

Defendant no.3 in her written statement also raised similar pleas and opposed the suit.Â The defendant no.4 also denied the case of the plaintiffs as

pleaded.Â It was his case that by virtue of giftÂdeed dated 06.07.2006, the defendant no.4 had become the absolute owner of the suit property.Â It

was also pleaded that various attempts were made by the plaintiffs to take forcible possession of the suit property.

4. The parties led evidence before the trial Court.Â After considering the same,

the trial Court held that the plaintiffs had proved that the agreement

dated 09.06.1997 was a legal and valid agreement, the plaintiffs had paid an amount of Rs.2,75,000/Â to the defendant no.1 and Rs.20,000/Â to the

defendant nos.2 and 3 and the plaintiffs were in possession of the suit property.Â The suit was accordingly decreed by granting the relief of specific

performance of said agreement.Â The giftÂdeed in favour of defendant no.4 was held to be not a bona fide transaction.Â Being aggrieved, the

defendants filed Regular Civil Appeal No.656 of 2012 before the appellate Court.Â The appellate Court after considering the evidence on record

confirmed the findings recorded by the trial Court but partly modified the decree for specific performance.Â It enhanced the amount of consideration

to be paid to the defendant nos.1 to 3 by Rs.5,00,000/Â.Â The appeal came to be dismissed.Â Being aggrieved, the original defendants have filed

Second Appeal No.458 of 2015 and while admitting the said appeal, the following substantial question of law was framed:Â?

(I) Whether in the wake of mention of the date for completion of agreement i.e. execution for sale deed by 01.07.1998, which was specifically

mentioned in Exh.98 and in the wake of admission given by the plaintiffs that they did not issue any notice between 01.07.1998 and 01.07.2001, the

Courts below are right in holding that within the meaning of Article 54 of the Limitation Act, suit for specific performance of contract was filed within

limitation ?

5. Second Appeal No.457 of 2015 arises from the following facts:Â?

The plaintiff in Regular Civil Suit No.1155 of 2006 is the defendant no.4 in Special Civil Suit No.926 of 2006.Â It is his case in the said suit that he is

the owner of Khasra No.46 admeasuring 3 Hectares 26 R land by virtue of registered giftÂdeed dated 06.07.2006 executed in his favour.Â

According to the plaintiff, the donors who had executed the said giftÂdeed were related to him and out of their free will, said giftÂdeed was executed

in his favour.Â The present defendant who is plaintiff no.1 in Special Civil Suit No.926 of 2006 had sought to take forcible possession of the suit

property and hence, the aforesaid suit was filed seeking a declaration that the defendant had no right, title or interest in the suit property.Â During

pendency of the suit, as forcible possession of the suit property was taken by the defendant, the plaint was amended and the relief of delivery of possession was sought.

6. The defendant filed his written statement and opposed the suit.Â It was pleaded that the defendant was in possession of the suit property pursuant

to the agreement dated 09.06.1997.Â He had paid substantial amounts to the owners of the suit property and therefore, his possession was lawful.Â

The alleged giftÂdeed dated 06.07.2006 was said to be a fraudulent document executed with a view to defeat the rights of the defendant.Â That

giftÂdeed was in fact got executed by paying consideration of Rs.3,30,000/Â to the defendant no.2 in Special Civil Suit No.926 of 2006.Â It was thus

prayed that the suit was liable to be dismissed.

7. The trial Court decided this suit alongwith Special Civil Suit No.926 of 2006 and held that the giftÂdeed dated 06.07.2006 was not bona fide and it

was prepared to defeat the claim of the defendant.Â It was further held that the plaintiff was not in exclusive possession of the suit property.Â On

that premise, the suit came to be dismissed.Â Being aggrieved, the original plaintiff filed Regular Civil Appeal No.846 of 2012 which appeal was

heard alongwith Regular Civil Appeal No.656 of 2012. By common judgment dated 12.08.2015 that appeal came to be dismissed.Â On 26.07.2018,

the following substantial question of law came to be framed:Â?

(I) Whether the Courts were correct in holding that the Gift Deed dated 06/07/2006 was not a legal and valid document in view of execution of

agreement dated 09/06/1997 at ExhibitÂ?98 ?

8. Shri A.K. Waghmare, appearing in person in support of both the appeals made the following submissions:Â?

(a) The suit for specific performance as filed on 25.09.2006 was barred by limitation inasmuch as, under the agreement dated 09.06.1997, the saleÂ?

deed ought to have been executed on 01.07.1998 as was specifically agreed between the parties.Â In the light of the specific date of executing the

saleÂdeed and completing the transaction having been mentioned in the agreement at Exhibit 98, the first part of Article 54 of the Limitation Act, 1963

(for short, â??the Act of 1963â??) would be applicable.Â It was submitted that even according to the plaintiffs, there was no extension of time for

completing the transaction and therefore, the suit ought to have been filed within a period of three years from the date agreed for executing the saleÂ?

deed.Â According to the appellants, both the Courts committed an error in holding the suit to be within limitation by applying the Second Part of

Article 54 of the Act of 1963 when even according to the plaintiffs, it was not their case that time to complete the transaction was extended.Â In

absence of there being any agreement between the parties to extend the period for completing the transaction, mere payments to the defendant no.1

would not have the effect of extending the period to complete the transaction.Â In any event, those payments were prior to the expiry of the period of

three years and therefore, those payments would not assist the case of the plaintiffs to urge that the suit as filed on 25.09.2006 was within limitation.Â

It was further submitted that undue importance was given by both the Courts to the filing and pendency of Regular Civil Suit No.1208 of 2004.Â That

suit had no relevance whatsoever with the transaction in question and said suit having been filed in SeptemberÂ2004 after the period of three years

from 01.07.1998, it would not have the effect of extending the period of limitation.Â All circumstances relied upon by the plaintiffs were after the

completion of the period of three years of limitation.Â Thus, by entertaining a suit which was barred by limitation, both the Courts have exercised

jurisdiction in a time barred suit.Â In that regard, the learned counsel placed reliance on the decision in Janardhanam PrasadÂ Versus Ramdas

[(2007) 15 SCC 174].

(b) Both the Courts committed an error in exercising discretion in favour of the plaintiffs while granting the decree for specific performance. The

readiness and willingness of the plaintiffs had not been duly proved in the light of various admissions of the plaintiffs.Â The plaintiff no.1 had clearly

admitted that he had never issued any notice to the defendant nos.1 to 3 to complete the transaction and to have the saleÂdeed executed.Â Similarly,

he had also admitted that there was no evidence on record to indicate availability of the balance consideration with him.Â In absence of any steps

whatsoever being taken pursuant to the agreement dated 09.06.1997 and the suit having been filed only on 25.09.2006, both the Courts erred in

granting the relief of specific performance in favour of the plaintiffs.Â The requirements of the provisions of Section 16(c) of the Specific Relief Act

(for short, â??the said Actâ??), were not satisfied.Â The discretion having been exercised on irrelevant considerations, same was required to be

interfered with.

In that regard, the learned counsel placed reliance on the decisions in Viseshar YadavÂ VersusÂ Govind Swami [AIR 2006 Chhattisgarh 149],

Gomathinayagam Pillai & OthersÂ VersusÂ Palaniswami Nadar [AIR 1967 SC 868], Lourdu Mari DavidÂ VersusÂ Louis Chinnaya

Arogiaswamy & Others [AIR 1996 SC 2814], Messrs. Sriram Cotton Pressing Factory (P) Ltd.Â VersusÂ K.E. Narayanaswami Naidu [AIR 1965

Madras 352], Gurunath Ganesh Redkar (D) Through L.Rs.Â Versus Balkrishna Jaiwant Redkar & Another [2012 (7) ALL MR 300], H.P.

PyarejanÂ VersusÂ Dasappa (Dead) by L.Rs. & Others [AIR 2006 SC 1144], Bal Krishna & AnotherÂ VersusÂ Bhagwan Das (Dead) by

L.Rs. & Others [AIR 2008 SC 1786], Nibash Ch. Saha & AnotherÂ VersusÂ Champa Lal Ladhar [AIR 2010 Gauhati 137], M/s P.R. Deb &

AssociatesÂ Versus Sunanda Roy [AIR 1996 SC 1504], R.ChinnaduraiÂ ersusÂ S. Rajalakshmi [AIR 2004 Madras 313], N.K. Giriraja ShettyÂ

VersusÂ N.K. Parthasarathy Setty & Others [AIR 2006 Karnataka 180], Thiruvengada PillaiÂ Versus Navaneethammal & Another [AIR 2008 SC

1541], K.Nanjappa (Dead) by LRs.Â VersusÂ R.A. Hameed alias Ameersab (Dead) by LRs & Another [2015 All SCR 3053], Bondar Singh &

OthersÂ VersusÂ Nihal Singh & Others [AIR 2003 SC 1905], Boodireddy Chandraiah & OthersÂ VersusÂ Arigela Laxmi & Another [AIR 2008

SC 380], Ramlal & AnotherÂ VersusÂ Phagua & Others [AIR 2006 SC 623], Bhusawal Borough MunicipalityÂ Versus Amalgamated Electricity

Co. Ltd. Bhusawal & Another [AIR 1966 SC 1652], Smt.Thakamma MathewÂ VersusÂ M. Azamathulla Khan & Others [AIR 1993 SC 1120],

Vishwanath Sitaram AgrawalÂ VersusÂ Sarla Vishwanath Agrawal [AIR 2012 SC 2586], Smt.KanakÂ Majumdar & AnotherÂ VersusÂ

Smt.Indrani Roy & Others [AIR 2013 Calcutta 81].

(c) The execution of the giftÂdeed at Exhibit 102 dated 06.07.2006 was not disputed by the donorsÂdefendant nos.1 to 3 in Special Civil Suit No.926

of 2006 and therefore, both the Courts erred in not granting any relief in Regular Civil Suit No.1155 of 2006.Â The stand raised by the defendant in

that suit that an amount of Rs.3,30,000/Â had been given by the plaintiff to Diwakar Ugle by cheque as consideration and that cheque had been

dishonoured was rightly not accepted by the trial Court. The clear admissions given by the donors that the giftÂdeed was executed with free will in favour of the plaintiff in Regular Civil Suit No.1155 of 2006 was sufficient to declare its execution as valid.Â No connection between the alleged

payment on that account by the plaintiff was established so as to connect the same with the said giftÂdeed.Â Both the Courts erred in not giving full

legal effectÂ to the said giftÂ?deed dated 06.07.2006.

The appellant in person also placed on record written notes of arguments which were also placed on record of the trial Court as per Exhibit 308 and it

was submitted that same be taken into consideration in support of the appeals.

9. Shri A.V. Khare, learned counsel for the respondent nos.1 and 2Âoriginal plaintiffs in the suit for specific performance while supporting the decree

for specific performance as well as dismissal of the suit based on the giftÂ?deed made the following submissions :Â?

(a) Both the Courts rightly held the suit to have been filed within limitation.Â The fact that amount of Rs.2,75,000/Â was paid from time to time with

the last payment being made on 01.08.2000 was a factor which could not be ignored.Â The further conduct of the defendant nos.2 and 3 in accepting

the amount of Rs.25,000/on 02.05.2005 coupled with the fact that there was an inter se dispute between the defendant no.1 on one side and defendant

nos.2 and 3 on the other side with regard to title, it was clear that the plaintiffs were required to wait till those disputes were resolved so that a clear

title could be conveyed to the plaintiffs.Â It is only after Regular Civil Suit No.1208 of 2004 came to be withdrawn on the ground that the defendant

nos.1 to 3 had executed a giftÂdeed in favour of defendant no.4 on 06.07.2006 that there was a refusal on the part of the defendant nos.1 to 3 to

perform their part of the contract and therefore, the same gave rise to the cause of action as per the Second Part of Article 54 of the Act of 1963.Â

The finding in that regard recorded by both the Courts did not call for any interference. Moreover the agreement being with regard to sale of

immovable properties, the time could not be made essence of the agreement.Â In that regard, learned counsel place reliance on the decisions in

Saradamani KandappanÂ VersusÂ S.Rajalakshmi & Others [(2011) 12 SCC 18] and Chand Rani (Smt) (Dead) by LRs.Â VersusÂ Kamal Rani

(Smt.)(Dead) by LRs. [(1993) 1 SCC 519].

(b) The discretion to grant the relief of specific performance has been exercised by both the Courts after considering the evidence on record.Â The defence as raised by the defendants has not been duly proved.Â All attempts were made by the defendant nos.1 to 3 to frustrate the agreement

which was clear from the deposition of defendant no.1. In the light of discretion being exercised in favour of the plaintiffs by both the Courts and that

relief having been granted after appreciating the evidence on record, same did not call for any interference under Section 100 of the Code of Civil

Procedure, 1908.Â In that regard, learned counsel placed reliance on the decisions in Santosh HazariÂ VersusÂ Purushottam Tiwari deceased by

L.Rs. [2001 (2) Mh.L.J. 786] and Gurdev Kaur & OthersÂ VersusÂ Kaki & Others [AIR 2006 SC 1975].Â It was thus submitted that in the light

of concurrent findings recorded by both the Courts, no interference with the decree as passed was called for.

(c) The giftÂdeed at Exhibit 102 had been executed merely to defeat the legal rights of plaintiffs in Special Civil Suit No.926 of 2006.Â In Regular

Civil Suit No.1208 of 2004 interim orders had been passed directing the parties to maintain status quo with regard to the possession of the suit

property.Â During pendency of that suit and when the said interim order was operating, the giftÂdeed came to be executed.Â After execution of the

giftÂdeed on 06.07.2006, Regular Civil Suit No.1208 of 2004 came to be withdrawn on 07.07.2006.Â All parties were aware about the aforesaid

interim order and the giftÂdeed executed in violation thereof was thus void abÂinitio.Â The trial Court had rightly found that the said giftÂdeed was

executed only to defeat the rights of the plaintiffs in the suit for specific performance.Â Moreover, the preponderance of probabilities clearly

indicated that consideration had passed to one of the donors for the purposes of executing that giftÂdeed.Â It was thus submitted that the plaintiff in

Regular Civil Suit No.1155 of 2006 was not entitled to any relief whatsoever under the said giftÂ?deed.

10. I have heard the appellant in person as well as the learned counsel for the respondents.Â I have perused the records of the case and I have also

given due consideration to the respective submissions.

As regards substantial question of law in S.A. No.458 of 2015.

11. For considering the aspect of limitation in filing the suit for specific performance, it would be first necessary to refer to the plaint averments.Â

The said averments indicate that according to the plaintiffs on 09.06.1997 an agreement came to be executed by the defendant nos.1 to 3 for selling

the suit property to the plaintiffs for a consideration of Rs.4,00,000/Â.Â The plaintiffs paid an earnest amount of Rs.50,000/Â to the defendant

no.1.Â It is then pleaded that from time to time further payment of an amount of Rs.2,25,000/Â was made and the last payment was made on

01.08.2000.Â In paragraph 4 of the plaint, it is pleaded that in the year 2001, the plaintiff no.1 had met the defendant no.1 and had requested him to

execute the saleÂdeed.Â The defendant no.1 called the plaintiffs to the office of the SubÂRegistrar, Kalmeshwar and the plaintiffs had been to that

office with the balance consideration.Â However, only the defendant no.1 remained present at the said office and he told the plaintiffs that the

presence of defendant nos.2 and 3 was not necessary. The plaintiffs found something fishy and sought clarification from the defendant no.1 who could

not give a satisfactory explanation.Â It is further pleaded in paragraph 4 that on 31.12.2002, the defendant no.1 had telephoned the plaintiffs informing

them that he had filed the case against the defendant nos.2 and 3. Â It is pleaded that he had told the plaintiff no.1 that he would have the saleÂdeed

executed by keeping some other persons present in the place of defendant nos.2 and 3.Â In paragraph 7, it is pleaded that defendant no.1 was not

interested in executing the saledeed and to avoid his liability he had filed Regular Civil Suit No.1208 of 2004.Â In paragraph 9, it is pleaded that during

pendency of the aforesaid suit, the defendant nos.2 and 3 received the amount of Rs.20,000/Â on 02.05.2005 by executing an acknowledgment on

stamp paper.Â They also received Rs.5,000/Â in cash in presence of witnesses.Â In paragraph 15, it is pleaded that though date of execution of the

saleÂdeed was mentioned as 01.07.1998 in the agreement, as the dispute of heirship in Regular Civil Suit No.1208 of 2004 was pending and the

defendants accepted an amount of Rs.25,000/Â? from the plaintiffs, the agreement dated 09.06.1997 was still in force.Â The time was not the essence

of the contract and the contract was still in force.Â In paragraph 17 of the plaint, it is pleaded that the cause of action firstly arose on 01.07.1998

when the defendant nos.1 to 3 failed to execute the saleÂdeed.Â It further arose on 18.09.1997, 30.01.1999, 03.07.1999, 19.04.2000, 11.05.2000 and

01.08.2000 when part payment was received.Â Â Â It also arose in the year 2001 and on 30.12.2002.Â The cause of action was continuous during pendency of Regular Civil Suit No.1208 of 2004.Â It further arose on 02.05.2005 when the defendant nos.2 and 3 received total amount of

Rs.25,000/Â?.Â It also arose on 05.07.2006 and 06.07.2006 when the giftdeed was executed.Â The suit has been filed on 28.09.2006.

12. As noted above, the defendants in the suit for specific performance raised a plea in their written statements that the suit was barred by

limitation.Â The agreement dated 09.06.1997 is at Exhibit 98 of the record.Â As per that agreement, the defendant nos.1 to 3 agreed to sell the suit

property to the plaintiffs for a consideration of Rs.4,00,000/Â and amount of Rs.50,000/Â was paid as earnest amount.০Â৭ There০e ৬is৭ ৭a ৭sp८ecific

stipulation with regard to the date of execution of the saleÂdeed.Â The said stipulation reads as â?? Â Â . .

Â â??.Â The said stipulation when translated means that the date of the saleÂ?deed would be 01.07.1998.

13. In the light of the aforesaid agreement, the question to be considered is whether the First Part of Article 54 of the Act of 1963 would be attracted

or whether the limitation would be governed by the Second Part of Article 54.Â As per the First Part of said Article, the time from which the period

of limitation would begin to run is from the date fixed for the performance.Â As per the Second Part where no such date is fixed, it would begin to

run when the plaintiff has notice that the performance is refused. In this regard, it would be necessary to first refer to the legal position in the matter

of applicability of Article 54 of the Act of 1963.Â In Pancharan Dhara & OthersÂ VersusÂ Monmatha Nath Maity (D) by L.R's & Another [AIR

2006 SC 2281], it has been observed in paragraph 19 as under:â??19. â?¦.....It is not in dispute that the suit for specific performance of contract

would be governed by Article 54 of the Limitation Act, 1964.Â While determining the applicability of the first or the second part of the said provision,

the court will firstly see as to whether any time was fixed for performance of the agreement of sale and if it was so fixed, whether the suit was filed

beyond the prescribed period unless any case of extension of time for performance was pleaded and established.Â When, however, no time is fixed

for performance of contract, the court may determine the date on which the plaintiff had notice of refusal on the part of the defendant to perform the

contract and in that event the suit is required to be filed within a period of three years therefrom.â??

In T.L. Muddukrishana & AnotherÂ VersusÂ Smt.Lalitha Ramchandra Rao [AIR 1997 SC 772], it has been held that for the purposes of limitation

it would begin to run from the date the parties have stipulated for performance of the contract.Â The suit is required to be filed within three years

from the date fixed by the parties under the contract.Â It has been further observed that when the case fails within the First Part of Article 54 of the

Act of 1963, the question whether or not time is the essence of the contract is not of much relevance.Â In Madina Begum & Another VersusÂ Shiv

Murti Prasad Pandey & Others [(2016) 15 SCC 322, the Honâ??ble Supreme Court after referring to the earlier decision in Ahmadsahab Abdul

Mulla (2)Â VersusÂ Bibijan [(2009) 5 SCC 462] held that the expression â??date fixed for the purposeâ? is a crystallized notion. When a date is

fixed, it means that there is a definite date fixed for doing a particular act. Â Therefore, there is no question of finding out the intention from other

circumstances.

14. From the aforesaid decisions, it becomes clear that if in the agreement, the parties have fixed a date for performance of the contract then the

period of limitation would start to run from that date as fixed. When the First Part of Article 54 of the Act of 1963 applies, the question of time being

the essence of the contract is not very relevant.

15. In the light of aforesaid legal position, the evidence on record is required to be taken into consideration.Â The plaintiff no.1 examined himself at

Exhibit 39.Â In his evidence, he reiterated the statements made in the plaint.Â He was crossÂexamined by the defendants and it would be material

to refer to the relevant portions of his crossÂ?examination.Â Those are as under:Â?

â??It is true that said document was in my custody from 1997 till JulyÂ2003.Â I have not initiated any proceeding on the basis of said document

from 1997 till JulyÂ2003.Â I had not issued any notice to defendant nos.1 to 3 from 1997 till JulyÂ2003 on the basis of said agreement for the

performance of the condition therein.Â My said claim is based on the agreement dated 09.06.1997.Â Que.: Whether it was agreed in between

plaintiff and defendants to execute the saleÂ?deed before 01.07.1998 ?

Ans.: The said date is referred in the said agreement.

I came to know first that there was a internal dispute in between them in the year 1998.Â I cannot tell whether there was no internal dispute in

between defendant Nos.1 to 3 before 1998.Â It is not true to say that I came to know that defendant Nos.1 to 3 are practicing fraud on me in the

year 2001.Â I came to know since from 1998 that defendant Nos.1 to 3 started avoiding to perform their part of agreement.

I have not issued any notice in writing to the defendant Nos.1 to 3 from 01.07.1998 to 01.07.2001 informing him that to remain present at the SubÂ?

Registrar Office for the execution of saleÂ?deed at a particular day on failure of it I will take legal action against him.

The period of the agreement was extended after 01.07.1998.Â I do not know on which exact date it was extended.

We have not executed any other new agreement with defendant Nos.1 to 3 from 01.07.1998 till 01.07.2001.

I have not taken consent letter from defendant Nos.1 & 2 in the period commencing from 01.07.1998 till 01.07.2001 & from 01.07.2001 till 31.07.2003

with respect to their consent to the agreement.

It is not true to say that as period was not extended, hence, there was no reference accordingly in Exhibit 98.Â I have not produced any document to

show that any separate document was executed for the extension of time for period commencing from 1998 till 2003.

We have not obtained any acknowledgment in writing and also orally from the defendants for the execution of agreement for its extension from period

July1998 till 2003.

I do not remember the exact date and month in which the incident as stated by me in para 5 of the affidavit was occurred.Â I came to know at that

time that defendants were avoided to execute the saleÂdeed on the strength of agreement of sale.Â I had not taken any certificate from

SubRegistrar stating that though I was present in the office, defendants preferred to remain absent.Â I have not executed any affidavit before

Tehsildar on that day stating that though I had gone to the office of SubÂ? Registrar, defendants preferred to remain absent.

I have not filed any document so as to show that on that particular date, I myself and remaining plaintiff are having remaining consideration amount.Â

I had not issued any notice to defendant Nos.1 to 3 immediately after occurrence of said incident stating that though, I had gone to the SubÂRegistrar

Office on that particular date, defendant Nos.1 to 3 preferred to remain absent and practiced a fraud on me.Â I had not initiated legal action against

them immediately after the occurrence of said incident.Â It is not true to say that averments made by me in para 4 of the plaint and facts stated in

para 5 of my affidavit are false, fabricated one.â??

16. Thus, on considering the agreement dated 09.06.1997 at Exhibit 98 it is clear that the date for execution of the saleÂdeed was fixed as

01.07.1998.Â However, according to the plaintiff no.1 the period for executing the saleÂdeed was extended after 01.07.1998 but he was not aware

on which date it was extended.Â He admitted that the plaintiffs had not executed any other new agreement with the defendant nos.1 to 3 from

01.07.1998 till 01.07.2001.Â He further admitted that he had not produced any document to show that any separate document was executed for

extension of time for the period commencing from 1997 till 2003.Â No written or oral acknowledgment was obtained from the defendants with regard

to the extension of the period under the agreement from JulyÂ1998 till 2003.Â It is thus, clear that from the evidence on record that as per the

agreement at Exhibit 98, the parties had agreed to have the saleÂdeed executed on 01.07.1998 and that the plaintiffs failed to prove that there was

any written document or oral agreement to extend the period for completing the transaction from 01.07.1998 till 2003.

17. Though it was sought to be urged on behalf of the plaintiffs that the agreement being one for sale of immovable property, the time was not the

essence of the contract and therefore the plaintiffs waited till 25.09.2006 for filing the suit for specific performance, that contention cannot be

accepted.Â Once it is found that in view of a specific date being mentioned in the agreement for execution of the saleÂdeed, the limitation would be

governed by the First Part of Article 54 of the Act of 1963, the question as to whether time was the essence of the contract is irrelevant and the same

is not required to be considered.Â Reference in that regard can be usefully made to the decision in Sumerchand Hukumchand & OthersÂ VersusÂ

Hukumchand Mathurdas & Others [1965 MP.L.J. 829] wherein it has been held that the question as to whether time is the essence of the contract is

not at all relevant for determining whether the First or the Second Part of Article 113 of Limitation Act, 1908 would apply to a particular case.Â The only material consideration is that when the parties have agreed to complete the transaction on a particular date specified, the limitation would be

governed by the First Part of Article 54 of the Act of 1963.

Similarly, the justification put forth by the plaintiffs that the defendants did not have a clear title and therefore in view of pendency of Regular Civil Suit

No.1208 of 2004 the plaintiffs could not have sought specific performance of the agreement in question also cannot be accepted.Â As noted above,

on the First Part of Article 54 of the Act of 1963 being applied, the limitation would expire by 01.07.2001.Â Regular Civil Suit No.1208 of 2004 has

been filed in SeptemberÂ2004 much after expiry of the period of three years even from 01.07.2001.Â Moreover, under Section 9 of the Act of 1963

once the time begins to run, it would continue to run till the completion of the prescribed period and no subsequent disability or inability to institute a suit

would stop the same. Hence, when the period of limitation commenced from 02.07.1998, it terminated on the expiry of the period of limitation and the

plea that there was a cloud on the title of the defendants or that they were not in a position to convey valid title cannot save the plaintiffs from the

operation of the rigors of the period of limitation as prescribed.Â Hence, the aforesaid contentions raised on behalf of the plaintiffs cannot be

accepted.

18. The trial Court in its judgment while discussing Issue No.8 as regards the aspect of limitation has devoted almost thirty nine paragraphs while

answering that issue and holding the suit to be within limitation. The trial Court has taken into consideration the dispute of ownership between the

defendants inter se and has held that said dispute was settled only on 06.07.2006 when Regular Civil Suit No.1208 of 2004 came to be

compromised.Â Despite noting the fact that as per the agreement, the time to complete the transaction was fixed it proceeded to apply the Second

Part of Article 54 of the Act of 1963 for holding the suit to be filed within limitation.

The appellate Court while answering the Point No.6 has also answered that point by giving importance to the inter se dispute between the defendants

as regards ownership of the suit property.Â It has referred to provisions of Section 55 of the Transfer of Property Act, 1882 to hold that the

defendants were not in a position to convey good title to the plaintiffs and until the dispute amongst them was settled, the plaintiffs were justified in not

filing the suit for specific performance.Â Further acceptance of certain amounts by the defendant nos.2 and 3 on 02.05.2005 has also been given

importance.Â As it has been found that as per the agreement, the saleÂdeed was to be executed on 01.07.1998 and even according to the plaintiff

no.1 there was no further written or oral agreement for extending the time to execute the saleÂ?deed, any subsequent payments cannot have the effect

of extending the time to complete the transaction.Â It would have been a different matter if the plaintiffs would have proved that the defendants had

agreed to extend the time to complete the contract.Â That is however not the case proved.

19. Thus, from the aforesaid discussion, it becomes clear that both the Courts wrongly interpreted the agreement at Exhibit 98 while holding the suit

filed on 25.09.2006 to be within limitation.Â In the face of clear stipulation in the agreement as regards the date fixed for execution of the saleÂdeed,

the finding recorded by both the Courts that the limitation was governed by the Second Part of Article 54 of the Act of 1963 is perverse. In the light of

the law laid down in Bondar Singh & Others and Vishwanath Sitaram Agrawal (supra) if the Courts have recorded a perverse finding ignoring the

clear evidence on record and by misinterpreting the agreement at Exhibit 98, such perverse finding is liable to be set aside under Section 100 of the

Code of Civil Procedure, 1908.Â Though the learned counsel for the plaintiffs sought to rely upon the decision in Santosh Hazari (supra) to contend

that the findings recorded in that regard did not deserve to be set aside, it is found that the present is a case which indicates that the Courts have

ignored the clear stipulation in the agreement fixing the date for performance of the contract and have applied wrong principles for holding the suit to

be within limitation.Â Similarly, the ratio of the decision in Gurdev Kaur & Others (supra) does not assist the case of the plaintiffs as no finding of

fact is being interfered with.Â The interference is on account of wrong interpretation of the agreement at Exhibit 98 which goes to the root of the

matter.Â The following observations of the Hon'ble Supreme Court in Hero VinothÂ VersusÂ Seshammal [(2006) 5 SCC 545] would justify

interference under Section 100 of the Code.

â??24. The principles relating to Section 100 CPC relevant for this case may be summarised thus:

(i) An inference of fact from the recitals or contents of a document is a question of fact.Â But the legal effect of the terms of a document is a

question of law.Â Construction of a document involving the application of any principle of law, is also a question of law.Â Therefore, when there is

misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.

(ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law.Â A question of law having

a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question

of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves a debatable legal

issue.Â A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of

law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle.Â In the second type

of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates

the settled position of law.

(iii) The general rule is that High Court will not interfere with the concurrent findings of the courts below.Â But it is not an absolute rule.Â Some of

the wellÂrecognised exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn

wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof.Â When we refer to

â??decision based on no evidenceâ?, it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the

evidence, taken as a whole, is not reasonably capable of supporting the finding.â??

20. Accordingly, the substantial question of law as framed in Second Appeal No.458 of 2015 is answered by holding that both the Courts committed

an error in holding that the suit for specific performance was filed within limitation.

As regards substantial question of law in S.A. No.457 of 2015.

21. The plaintiff in Regular Civil Suit No.1155 of 2006 has pleaded in the plaint that he was related to the defendant nos.1 to 3 in the suit for specific

performance and that out of their free will, said giftdeed came to be executed.Â Steps were also taken to have the property mutated in the name of

plaintiff and possession was also delivered.Â The defendant however made various attempts to take forcible possession of the suit property that gave

a cause of action to file the suit for declaration that the defendant had no right or title in the suit property and a decree for permanent injunction

restraining the defendant from disturbing his possession.Â During pendency of that suit, it is the case of the plaintiff that forcible possession of the suit

property came to be taken by the defendant. The plaint was accordingly amended and a prayer for grant of possession was also made.Â In the

written statement at Exhibit 22, the entitlement of the plaintiff to the suit property on the basis of that giftÂdeed was denied. It was stated that the

donors were never in possession of the suit property and that by virtue of the agreement dated 09.06.1997, the defendant was in actual possession of

the suit property.Â The giftÂdeed was a fraudulent document and it had come to the knowledge of the defendant that for the purposes of executing

that giftÂdeed, a cheque for an amount of Rs.3,30,000/Â was drawn by the plaintiff in favour of one of the donors Shri Diwakar Ugle which cheque

was dishonoured.

22. The plaintiff examined himself at Exhibit 42 and according to him as there was a settlement between the land ownersÂdonors, Regular Civil Suit

No.1208 of 2004 was withdrawn on 07.07.2006 and before that the giftÂdeed was executed.Â He admitted that he was having a bank account at the

concerned branch from which the cheque in question came to be issued.Â He however denied having issued any such cheque in favour of Diwakar

Ugle.Â The plaintiff examined two more witnesses on the aspect of his possession.Â The defendant examined himself and referred to the order of

injunction that was passed by the Court in Regular Civil Suit No.1208 of 2004 directing parties to maintain status quo.Â He denied the possession of

the plaintiff over the suit property and he also stated that the order permitting withdrawal of Regular Civil Suit No.1208 of 2004 was not challenged by

him.Â The defendant examined an officer from the Union Bank at Exhibit 175 and said witness deposed that Account No.3337 stood in the name of the plaintiff.Â In his crossÂexamination, he stated that there was some difference in the signature on the cheque at Exhibit 153 and the account

opening form.Â He however stated that he was not aware of the purposes for which the cheque came to be issued.Â These are the pleadings and

the evidence led by the parties with regard to the giftÂ?deed at Exhibit 102.

23. The trial Court recorded a finding that the execution of the giftÂdeed was not disputed by the donors and in view of the law laid down in Surendra

KumarÂ VersusÂ Nathulal [AIR 2001 SC 2040], it was not necessary to examine an attesting witness to prove that document. It therefore held that

though the execution of the giftÂdeed was duly proved, that transaction was hit by the provisions of Section 19(b) of the said Act. The appellate Court

on the basis of preponderance of probabilities held that the cheque for an amount of Rs.3,30,000/Â was issued by the plaintiff as consideration for

execution of the giftÂdeed.Â On that count, a finding was recorded that the said giftÂdeed was not legal and valid and it was prepared with an

intention to deprive the legitimate claim of the plaintiff in the suit for specific performance.

24. On consideration of the evidence led by the parties with regard to the execution of the giftÂdeed, one of the donors Diwakar Ugle was examined

by the plaintiff in Special Civil Suit No.926 of 2006, below Exhibit 166.Â He has deposed that the giftÂdeed was prepared as per the say of the

donors and that he was aware about its contents.

Similarly, another donor Vasantrao Mukey who was examined at Exhibit 179 has also stated that the giftÂdeed was executed by free will in favour of

the plaintiff in Regular Civil Suit No.1155 of 2006 as said plaintiff was closely related.Â The other donor in her written statement has admitted

execution of the giftÂdeed.Â The giftÂdeed at Exhibit 102 indicates that it has been signed by the donors and the gift in question has been accepted

by the donee.Â The giftÂdeed is also duly registered.Â It is thus found that the necessary ingredients of Sections 122 and 123 of the Transfer of

Property Act, 1882 stand complied with.Â In fact, the trial Court has recorded a clear finding that the gift had been validly executed.Â Even in this

appeal, it was not urged that due execution of said will had not been proved.

As observed earlier, when the execution of the gift was not disputed by the donors, it was not necessary to examine any attesting witness.Â Hence, the finding recorded that due execution of the giftÂ?deed at Exhibit 102 has been proved is based on material evidence available on record.

25. It is however the contention of the defendant in Regular Civil Suit No.1155 of 2006 that said giftÂdeed has been executed when the order of

status quo that was passed in Regular Civil Suit No.1208 of 2004 was in operation.Â Hence, said giftÂdeed was void.Â It is undisputed that during

pendency of Regular Civil Suit No.1208 of 2004 and Writ Petition No.5797 of 2005 which arose out of challenge to the interim order of injunction, the

Court had directed the parties to maintain status quo in regard to possession only.Â The said interim order related to the actual possession of the suit

property and hence, same would not preclude execution of the giftÂdeed.Â Moreover, under provisions of Section 123 of the Transfer of Property

Act, 1882, execution of a registered instrument in that regard is sufficient.Â That compliance having been done, it cannot be said that the order of

status quo that was operating in Regular Civil Suit No.1208 of 2004 in relation to the possession of the suit property was in any manner

affected/breached by executing the said giftÂdeed.Â Hence, that contention cannot be accepted.Â Similarly, when it is found that the claim for

specific performance is found to be barred by the law of limitation, the question of applicability of the provisions of Section 19(b) of the said Act would

not arise so as to cause any legal impediment in upholding the said giftÂdeed.Â So also, the aspect of consideration said to be paid by the plaintiff in

favour of one of the donors has not been duly proved. The said donor has categorically refused having received any consideration whatsoever towards

execution of the said giftÂdeed.Â The observations in that regard made by the appellate Court are against the evidence on record and the same do

not support the case of the defendant.

It is thus found that due execution of the giftÂdeed at Exhibit 102 has been duly proved.Â The plaintiff in Special Civil Suit No.926 of 2006 having

filed the suit for specific performance beyond the period of limitation and the relief of specific performance having found to be now barred by

limitation, the giftÂdeed dated 06.07.2006 would be entitled to be given its legal effect.Â Accordingly, the substantial question of law as framed in

Second Appeal No.457 of 2015 is answered by holding that the Courts were not justified in holding that the giftÂdeed dated 06.07.2006 was not a legal and valid document in view of execution of the agreement dated 09.06.1997 at Exhibit 98.

26. As a result of the aforesaid answers to the substantial questions of law, it is held that the plaintiff in Special Civil Suit No.926 of 2006 is not entitled

for the relief of specific performance as that relief has been sought beyond the limitation as prescribed by the First Part of Article 54 of the Act of

1963.Â As a consequence of the same, the giftÂ?deed dated 06.07.2006 is held to be a legal and valid document.Â Accordingly, the following order is

passed:

(I) Second Appeal No.458 of 2015 is allowed.Â The judgment in Special Civil Suit No.926 of 2006 dated 05.11.2011 as well as the judgment in

Regular Civil Appeal No.656 of 2012 dated 12.08.2015 are set aside.Â Special Civil Suit No.926 of 2006 stands dismissed as being barred by

limitation.

(II) Second Appeal No.457 of 2015 is allowed.Â The judgment in Regular Civil Suit No.1155 of 2006 dated 05.11.2011 and the judgment in Regular

Civil Appeal No.846 of 2012 dated 12.08.2015 are set aside.Â Regular Civil Suit No.1155 of 2006 is decreed in terms of prayer clauses (BÂ2) and

(BÂ3) of the plaint.Â Since the defendant in Regular Civil Suit No.1155 of 2006 is in possession of the suit property, he is granted time of three

months to deliver its possession to the plaintiff.

Decree be drawn accordingly.

(III) The parties shall bear their own costs in both the Second Appeals.

