

(2013) 08 MP CK 0151

In the Madhya Pradesh High Court

Case No : First Appeal No: 175 OF 2011

Smt. Madina Begam and Another

APPELLANT

Vs

Shiv Murti Prasad Pandey and Others

RESPONDENT

Date of Decision : 16-08-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Evidence Act, 1872 — Section 91, 92
Limitation Act, 1963 — Section 15, 15(1), 9
Specific Relief Act, 1963 — Section 16(1)(C)
Transfer of Property Act, 1882 — Section 19(6)

Citation : (2013) ILR (MP) 2169 : (2014) 2 MPJR 8

Hon'ble Judges : Vimla Jain, J;Rajendra Menon, J

Bench : Division Bench

Advocate : Sanjay Agrawal and Mr. Sushil Agrawal, for the Appellant; J.L. Soni, Advocate for Respondent No. 1 and 2, Shri Sanjay Dwivedi, learned Government Advocate for Respondent No. 3, Shri Ravish Agrawal, learned Sr. Advocate, Shri L.S. Singh, Shri Kaustub Jha and Shri Lav Kush Mishra, Advocates for Respondent Nos. 4 and 5, for the Respondent

Final Decision : Dismissed

Judgement

Rajendra Menon, J.—This is an appeal filed u/s 96 of the CPC calling in question tenability of a judgment and decree dated 1.2.2011 passed by the 10th Additional District Judge, Jabalpur in Civil Suit No. 41A/2008 dismissing plaintiffs' suit for specific performance of an agreement entered into between the plaintiffs and one Late Smt. Gulab Bai. The dispute in question pertains to certain agricultural land bearing khasra nos. 438, 439, 440 and 456 situated in Patwari Halka No. 26 Gram Amkhera, Tehsil & District-Jabalpur. Even though, the total area of the said land is 2.13 acres, the dispute pertains to a portion of the land measuring 1.63 acres, which was agreed to be sold by an agreement dated 3.9.2001, specific performance of which was sought for in the suit.

2. It was the case of the plaintiffs that Late Gulab Bai being the owner of the

property in question executed the agreement on 3.9.2001 agreeing to sell 1.63 acres of land to plaintiffs/appellant Nos. 1 & 2 for a total consideration of Rs. 4,89,000/-. In the agreement, it was stipulated that out of the agreed amount being the consideration for the sale, a sum of Rs. 1.25,000/- was paid as earnest money, rest of the amount was to be paid at the time of registration of the sale-deed, it was also agreed to between the parties that the sale deed shall be executed within a period of six months. It is said that after the agreement was entered into on 3.9.2001 and during her lifetime, late Gulab Bai who was an aged widow and who had no source of income, had executed the agreement to generate some finance for herself. It is further said that on 16.11.2001, late Gulab Bai executed a registered will in favour of Shri Shiv Murti Prasad Pandey and Shri Devendra Prasad Pandey, Respondent Nos. 1 & 2 herein (Defendant Nos. 1 & 2) and in the said will, it was clearly mentioned that an agreement has been entered into for sale of 1.63 acres of land with the plaintiffs and Respondent Nos. 1 & 2 were given the responsibility of ensuring that the sale deed was executed as per the agreement entered into on 3.9.2001. It is said that after execution of this will, late Gulab Bai died on 2.1.2002. It is also seen from the records that much before execution of this agreement for sale on 3rd of September, 2001, a civil suit was filed by late Gulab Bai against one Amar Singh and Shri Jaswant Singh in a court of competent jurisdiction, this civil suit was filed in the year 1994 and was registered as Civil Suit No. 479A/1994. In this suit, late Gulab Bai sought a declaration with regard to her title and possession of the suit property and wanted Amar Singh and Jaswant Singh to be restrained from interfering with her possession. The suit was decreed on 2.8.2001 vide Exhibit-P3 and it is after decreeing of the said suit on 2.8.2001 that the agreement for sale dated 3.9.2001, Exhibit-P1 was entered into between the parties, as the title and possession of late Gulab Bai was affirmed in the decree.

3. However, after Civil Suit No. 479A/1994 was decided in favour of late Gulab Bai, Jaswant Singh and Amar Singh filed first appeal before this Court on 8.9.2001, this case was registered as F.A. No. 399/2001 and vide Exhibit-P4 on 22.9.2001, a bench of this Court passed an order directing parties to the appeal to maintain status-quo and there was also an order restraining late Gulab Bai from alienating the property. It may be taken note of that in this first appeal, the present appellants were not a party and there was no injunction or stay order operating against them. Be it as it may be, fact remains that during the pendency of the first appeal, an agreement for sale Exhibit-P1 dated 3.9.2001 and the registered will of late Gulab Bai Exhibit-P2 dated 16.11.2001 was executed and in the meanwhile on 2.1.2002, Gulab Bai expired. As by virtue of the will dated 16.11.2001, the respondents herein Shri Shiv Murti Prasad Pandey and Shri Devendra Prasad Pandey became holders of the property of late Gulab Bai, they were impleaded as parties in the first appeal and finally the appeal bearing No. 399/2001 was dismissed on 28.9.2006 vide Exhibit-P5. It was the case of the plaintiffs/appellants before the trial court that after the agreement was executed on 3.9.2001 and after Late Gulab Bai died on 2.1.2002 i.e. six

months before the period for execution of the sale deed, they approached Respondent Nos. 1 & 2 for execution of the sale deed. However, they were told orally that as there is stay in the first appeal, plaintiffs have to wait till the first appeal is decided. Accordingly, it is the case of the appellants that they did not take any action upto 13.8.2008, after the first appeal was dismissed on 28.9.2006, they issued a show cause notice Exhibit-P12 on 13.8.2008 for getting sale deed registered.

4. It is the case of the appellants that after the first appeal was dismissed on 28.9.2006, they have made oral submission for execution of the sale deed but they were informed that the name of Respondent Nos. 1 and 2 have to be mutated in the records and as the same has not been done, the sale deed cannot be executed. However, sometime in August, 2008, it came to the notice of the plaintiffs vide Exhibit-P9 that the entire property after mutation has been sold by Respondent Nos. 1 & 2 in favour of Smt. Anita Jain/Respondent No. 4, therefore, they issued the notice on 13.8.2008. It was replied to vide Exhibit-D4 on 15.9.2008 and, thereafter, immediately on 13.10.2008, they filed a suit for specific performance. Defendants appeared and filed their written statement and pointed out for the first time in the written statement that late Gulab Bai during her lifetime had cancelled the agreement on 19.11.2001 vide Exhibit-D1, the earnest money paid as per the agreement dated 3.9.2001 was only Rs. 90,000/-, even though it is mentioned as Rs. 1,25,000/- in the agreement and the amount of Rs. 90,000/- received as earnest money by late Gulab Bai was returned back by her in three installments, two of Rs. 5000/- each and one installment of Rs. 80,000/- which was the 3rd installment. Thereafter, the entire agreement was cancelled on 19.11.2001 after the amount of Rs. 90,000/- was repaid. It was said by the defendants that as the agreement is cancelled, no specific performance can be ordered and they also raised a plea that the agreement dated 3.9.2001 is a false and fabricated agreement and, therefore, no decree for specific performance of such an agreement can be issued. Respondents also raised a question of limitation, it was said that as the sale deed was to be executed within six months from 3.9.2001 and as the period of six months was already over sometime in March, 2002, the suit filed after a period of more than six years was not maintainable.

5. Based on the averments made by the parties, 13 issues were framed by the learned court, which covered various aspects of the matter. These issues shall be referred to as and when required. One of the issue framed was as to "whether the suit was filed within limitation" i.e. Issue No. 8 and while answering this issue, it is held that the suit is within limitation. Be it as it may be, as the suit was dismissed by the learned court on merit, this First Appeal has been filed.

6. Shri Sanjay Agrawal, learned counsel for the appellants argued at length. It was pointed out by him that when the agreement for sale Exhibit-P1 dated 3.9.2001 was entered into, the total area agreed to be transferred was 1.63 acres, the sale consideration fixed was 4.89 lacs. The agreement indicates that

an advance of Rs. 1.25 Lacs has been paid and the remaining amount was to be paid within six months at the time of the execution of the sale-deed. He took us through the agreement available on record Exhibit-P1 dated 3.9.2001, the subsequent will executed by late Gulab Bai vide Exhibit-P2 dated 16.11.2001 and argued that the execution of the sale deed dated 3.9.2001 and the commitment of late Gulab Bai to sell the property to the plaintiffs was reiterated by her in the will. He demonstrated before us that the execution of the agreement dated 3.9.2001 has been found established by the trial court. The objection with regard to the agreement being a forged and fabricated documents has been disbelieved. He took us through the judgments in question, the findings recorded thereof in relation to the documents and submitted that a perverse and illegal finding has been recorded.

7. It was submitted that the findings recorded by the trial court to the effect that the agreement was cancelled on 19.11.2001 and the reasons given for cancellation of the agreement was wholly perverse, Shri Agrawal argued that in the agreement, the earnest money paid is admittedly indicates as Rs. 1.25 Lacs, inspite thereof the trial court has recorded a finding that the earnest money paid was Rs. 90,000/-, which has been returned back, this inference is drawn based on a wholly illegal and perverse consideration, which is not supported by any material available on record. Similarly, he emphasized that the agreement has been proved and the fact that defendant Nos. 1 & 2 became owner by virtue of the will is also proved. The evidence available on record does show that the plaintiffs were always willing and ready to perform their part of the agreement but in a perverse and illegal way, it has been held in Para-32 that the plaintiffs have not led evidence to show that they were willing or ready to perform the agreement. He referred to Para-18 and 20 and various other parts of the judgment in support of his contention. We will refer to these submissions in detail as and when required. However, it was submitted by learned counsel that even though time is not the essence of the contract in question but the appellants did take steps by approaching defendants for performance of the agreement within six months by execution of the sale-deed but they were informed that as stay is granted by the High Court on 22.9.2001 in F.A. No. 399/2001, sale-deed cannot be executed. It is said that because of this execution of the sale deed was not possible, therefore, plaintiffs were directed to wait till conclusion of the first appeal. The first appeal was dismissed vide Exhibit-P5 dated 28.9.2006 and after dismissal of the first appeal when plaintiffs approached Respondent Nos. 1 & 2, they were told that names of Respondent Nos. 1 & 2 are yet to be mutated in the land records and the sale-deed can be executed after the mutation is ordered. When nothing was done and the property was sold by Respondent Nos. 1 & 2 to Respondent No. 4, notice was issued and thereafter, Shri Sanjay Agrawal points out that the suit was filed which is within limitation, as upto 28.9.2006, the plaintiffs were prevented from filing the suit due to the stay order, which was in operation and as the suit is filed within a period of three years from the said date i.e. 28.9.2006, the findings recorded by

the trial court with regard to suit being within the limitation is a proper finding. He also points out that the Respondent No. 4 is not a bona-fide purchaser, she purchased the property knowing very well about the agreement entered into and, therefore, it is said that she cannot be termed as a bona-fide purchaser.

8. Shri Sanjay Agrawal, in support of the aforesaid contention invited our attention to the provisions of Section 16(1)(C) of the Specific Relief Act, Section 91 & 92 of the Evidence Act, Section 19(6) of the Transfer of Property Act, and emphasized that the suit of the plaintiffs has been dismissed in an illegal and arbitrary manner and the findings recorded are perverse and unsustainable. In support of his contention, he invited our attention to the following judgments: Kiran Bala Vs. Surinder Kumar, , Mohan Lal (Deceased) through his Lrs. Kachru and Others Vs. Mirza Abdul Gaffar and Another, Man Kaur (dead) by LRS. Vs. Hartar Singh Sangha, , Pramod Buildings and Developers (P) Ltd. Vs. Shanta Chopra, . He also invited our attention to various other judgments with regard to the submissions made. We will refer to the submissions in detail with reference to the judgments as and when required.

9. Shri J.L. Soni, learned counsel for Respondent Nos. 1 & 2 refuted the aforesaid and submitted that the trial court has given a reasonable and justifiable finding and, therefore, now no interference into the matter is called for. He tried to refute each and every allegation made by the plaintiffs in the appeal.

10. Shri Ravish Agrawal, learned Sr. Advocate appearing for Respondent No. 4 also submitted that a reasonable and proper finding recorded by the trial court in the matter does not call for any interference. However, he raised an important question of law by referring to Section 15 of the Limitation Act and argued that the suit was barred by limitation. The findings recorded by the trial court to say that the suit filed within three years of dismissal of the first appeal is within limitation is an incorrect finding and, therefore, he raised an objection with regard to the maintainability of the suit itself. It was submitted by Shri Ravish Agrawal, learned Sr. Advocate that u/s 15 of the Limitation Act, certain period to be excluded for computing, limitation in filing a suit is contemplated, the period excluded is that where institution of a suit or execution of a decree is prohibited by a stay or an injunction. He refers to the order passed in First Appeal No. 399/2001, the stay granted by this Court on 8.9.2001 vide Exhibit-P3 to say that what was injuncted and stayed by the court was only restraining late Gulab Bai from alienating the property. There was no stay against the plaintiffs for filing the suit. That being so, it is said that the suit should have been filed within six months of execution of the agreement i.e. on or before 3rd of March, 2002 and the period from 3.3.2002 to 28.9.2006 could not be excluded with the aid of Section 15 of the Limitation Act. It was submitted by him that Section 15 cannot be applied in a case where no injunction is granted restraining a party from filing the suit. Accordingly, learned Sr. Advocate submitted that as there was no stay or injunction restraining plaintiffs from filing the suit, the findings recorded vide Issue No. 8 by the trial court to say that the suit is within limitation is a wholly

perverse and unsustainable finding. In support of the aforesaid contention advanced, Shri Ravish Agrawal, learned Sr. Advocate invited our attention to the following judgments: AIR 1932 165 (Privy Council) , Sirajul Haq Khan and Others Vs. The Sunni Central Board of Waqf, U.P. and Others, and the judgment of the Karnataka High Court in the case of Mahboob Pasha Vs. Syed Zaheeruddin and Others, . He took us through the judgment rendered by the Karnataka High Court in the case of Mahboob Pasha (Supra), wherein reliance is placed by the judgment of the Privy Council in the case of Nagendranath (Supra) and Supreme Court in the case of Sunni Central Board of Waqf U.P. (Supra) to say that the Karnataka High Court under similar circumstances has interpreted Section 15(1) of the Limitation Act and similar contention as are advanced is upheld in these cases. He also submits that the question has been considered and decided by the Andhra Pradesh High court also in the case of S. Mahaboob Basha and Another Vs. B.R. Mohan Rao (died) per L.Rs. and Others, , wherein the case of Sunni Central Board of Waqf U.P. (Supra) has been relied upon. Accordingly, based on the aforesaid two judgments, Shri Ravish Agrawal submits that the suit was barred by limitation and, therefore, the appeal should be dismissed.

11. Shri Sanjay Agrawal, learned advocate rebutted the aforesaid contention and invited our attention to Clause-8 of the agreement Exhibit-P1 dated 3.9.2001 and submitted that even though the sale deed was agreed to be executed within six months but in Clause-8, a condition is incorporated in the agreement to the effect that if in future any dispute arises or if any legal proceedings are initiated with regard to title of the property, late Gulab Bai would be responsible of the same and as the dispute arose during the pendency of the First Appeal No. 399/2001, it was argued by him that right of the plaintiffs to sue would revive only after decision on the first appeal. That apart, he invited our attention to the order 41 Rule 22 and argued at length that as Issue No. 8 with regard to Limitation is decided against the defendants and as the defendants have not filed any cross appeal or objection, they are debarred from raising any objection in this regard now in this appeal.

12. Shri Ravish Agrawal rebutted the aforesaid contention and pointed out that after the amendment to the CPC vide amending Act, 104 of 1976 and even before the amendment, the legal position was well settled that no appeal would lie against a mere finding. According to Shri Ravish Agrawal, the appeal was only maintainable if there was a decree and as the decree in its entity in the present case was in favour of the defendants, there was no occasion for them to file an appeal or cross objection. It was submitted by him that even after the amendment to the C.P.C. By the Act 104 of 1976, the position of law does not change, the defendants can challenge the finding with regard to Issue No. 8 without filing a cross appeal and in support of the aforesaid contention, he invites our attention to the judgment of this Court in the case of Tej Kumar Jain Vs. Purshottam and Another, , Shri Ravinder Kumar Sharma Vs. The State of Assam and Others, to say that filing of a cross objection in the facts and circumstances of the case was not called for.

13. During the course of hearing Shri Sanjay Agrawal, learned counsel for the appellant had submitted that in view of the Clause-8 of the Agreement dated 3.9.2001, till the dispute with regard to the title of the property is not resolved, the suit was within limitation.

14. Shri Ravish Agrawal, learned Sr. Advocate had refuted this contention by saying that once the limitation starts running it cannot be arrested and in support thereof, he invites our attention to the provisions of Section 9 of the Limitation Act.

15. We have heard learned counsel for the parties at length and considered the rival contentions. Even though, during the course of hearing of this appeal, Shri Sanjay Agrawal appearing for the appellants had in detail referred to the findings of the trial court and challenged the findings on merit, but as a crucial question of law with regard to the maintainability of suit on the ground of limitation is raised, before adverting to consider the questions on merit, it is thought appropriate to deal with the objection about maintainability of the suit, as the said question will determine the requirement of going into the merit or not. If the suit itself was not maintainable, it is not necessary for this Court to enter into the controversy on merit. That being so, we propose to consider the following three questions at the very outset:

1. whether the suit filed was barred by limitation and whether in excluding the period from 3.3.2002 to 28.9.2006 and permitting the suit to be filed within a period of three years after 28.9.2006, the trial court has committed any error;

2. What is the effect of Section 15 and whether the aforesaid period i.e. from 3.3.2002 to 28.9.2006 could be excluded by applying Section 15 of the Limitation Act;

3. Whether the aforesaid two objections could be raised by the defendants now in this First appeal, without filing a cross objection i.e. whether order 41 Rule 22 permits them to do so;

16. As far as the question Nos. 1 and 2 framed hereinabove are concerned, both can be decided together. For the said purpose, it would be necessary to take note of the requirement of Section 15 of the Limitation Act. Section 15(1) is only relevant for the said purpose, therefore, for the sake of convenience, Section 15(1) is reproduced herein under:

15. Exclusion of time in certain other cases.- (1) In computing the period of limitation of any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

17. A perusal of the aforesaid Section goes to show that in computing the period of limitation for a suit, institution of which has been stayed by injunction or an order, the time of continuation of the injunction has to be excluded. The key

words in the aforesaid section are "Stay, the institution of the suit". If the order passed by the High Court in F.A. No. 399/2001 vide Exhibit-P3 is taken note of, it would be seen that what was said by this Court was, directing the parties to the First appeal namely; Jaswant Singh, Amar Singh and late Gulab Bai to maintain status quo with regard to the property and not to alienate the property. There is nothing in this order to say that there was a stay with regard to instituting any suit or rather a suit for specific performance of an agreement like the present agreement Exhibit-P1 dated 3.9.2001. The question somewhat identical in nature had come up for consideration in a case before the Karnataka High Court i.e. Mahboob Pasha (Supra). In that case also, a suit was filed for specific performance of an agreement and on the grounds that in another suit, there was an injunction, the exclusion available u/s 15 was sought for. The Karnataka High Court considered similar question and after relying upon a judgment rendered by the Privy Council in the case of AIR 1945 5 (Privy Council) found that if there is no specific injunction restraining institution of the suit and if the suit is barred by limitation, then Section 15 of the Act did not permit for exclusion of the period. This decision of the Privy Council has been followed by the Supreme Court in the case of Sunni Central Board of Waqf U.P. (Supra) and the Supreme Court considered the effect of Section 15 of the limitation Act, referred to the decision of the Privy Council and observed as under:

For excluding the time u/s 15, it must be shown that the institution of the suit in question had been stayed by an injunction or order; in other words, the section requires an order or an injunction which stays the institution of the suit. And so in cases falling u/s 15, the party instituting the suit would by such institution be in contempt of Court. If an express order or injunction is produced by a party that clearly meets the requirements of Section 15. Even assuming that Section 15 would apply ever to cases where the institution of a suit is stayed by necessary implication of the order passed or injunction issued in the previous litigation, there would be no justification for extending the application of Section 15 on the ground that the institution of the subsequent suit would be inconsistent with the spirit or substance of the order passed in the previous litigation. It is true that rules of limitation are to some extent arbitrary and may frequently lead to hardship; but there can be no doubt that, in construing provisions of limitation, equitable considerations are immaterial and irrelevant and in applying them effect must be given to the strict grammatical meaning of the words used by them.

(Emphasis Supplied)

18. Thereafter, reference is also made to a subsequent decision of the Supreme Court in the case of The Director of Inspection of Income Tax (Investigation), New Delhi and Another Vs. Pooran Mal and Sons and Another, , wherein similar views have been expressed. All these judgments have been considered by the Karnataka High Court in the case of Mahboob Pasha (Supra) and a complete reading of all these judgments would indicate that words used in the Limitation

Act have to be given strict interpretation and even though the Limitation Act may at times be found to be unreasonable or harsh to the parties but while construing the provisions of Limitation Act, it is held that the equitable considerations are immaterial and irrelevant. The rules of the Limitation have to be given effect to strictly in accordance with the grammatical meaning of each word without deviating from its actual meaning. It may operate harshly against a party but it has to be given effect to. If on such an interpretation, it is found that suit is barred by limitation, the court has no jurisdiction in the case. Under Article 54 of the Limitation Act, the prescribed period of limitation for filing a suit of specific performance of a contract is three years and the period of three years has to be calculated based on two contingencies i.e. the date fixed for performance of the contract or if no such date is fixed, the date when the plaintiffs had notice about refusal of the performance by the defendants. In this case, admittedly, a date for performance is fixed i.e. six months from the date of execution of the contract and, therefore, as a specific period for performance is fixed, the period of limitation would be three years w.e.f. 3.3.2002 i.e. the date when the period of six months for execution of the sale-deed lapsed. If the objections raised by Shri Ravish Agrawal, learned Senior Advocate are evaluated in the backdrop of the aforesaid legal provision and if the consideration in this regard made by the Andhra Pradesh High Court in the case of Mahboob Pasha (Supra) are also taken note of, we have no hesitation in holding that the stay granted by the High Court on 22.9.2001 in F.A. No. 399/2001 does not help the plaintiffs in any manner whatsoever. The stay cannot be considered for the purpose of excluding the period of limitation by applying Section 15 of the Limitation Act. Accordingly, we hold that the suit was barred by limitation and in recording a finding that the suit was within limitation, the learned trial court has committed a grave error.

19. Having held so, the next question would be as to whether the aforesaid consideration can be made without any cross objection being filed by any of the respondents in this regard. That takes us to Order 41 Rule 22. The provisions of Order 41 Rule 22 as it stood prior to amendment by the Act 104 of 1976 has been considered in the three cases referred to by Shri Ravish Agrawal. In the case of Tez Kumar Jain (Supra), a learned single Judge of this Court had considered the matter and, thereafter, this judgment and a full bench judgment of the Madras High Court in the case of Gaddam Chinna Venkata Rao and Others Vs. Koralla Satyanarayanamurthy and Another, has been taken note of by the Supreme Court in the case of Ravindra Kumar Sharma (Supra) and if the aforesaid judgments are read, it would be seen that for challenging a particular issue or a finding, if a party is not required to challenge any decree, the question of filing of a cross objection even before and after the amendment remains unchanged. It is held in all these cases that before amendment to the provisions of Order 41 Rule 22, if a decree was not to be challenged and if only a particular issue or a finding is required to be challenged, filing of a cross objection was not at all necessary. The only change made after the amendment w.e.f. 1.2.1977 is that an option is given to the party either to file a cross objection or not.

However, if an option is exercised by filing a cross objection, then the benefit of sub-rule 4 of Rule 22 will be available to the party concerned in as much as dismissal of the appeal for want of prosecution or its withdrawal will not result in dismissal of the cross objection. The cross objection can be persuaded with even after the appeal is dismissed.

20. However, to make things more clear, we can refer to the judgment in the case of Banarsi and Others Vs. Ram Phal, . After taking note of the entire scheme of Order 41 Rule 22 i.e. both the amended and unamended provisions and various judgments on the questions in Para-10, the following observations are made by the Supreme Court:

The CPC amendment of 1976 has not materially or substantially altered the law except for a marginal difference. Even under the amended Order 41 Rule 22 Sub-rule (1) a party in whose favour the decree stands in its entirety is neither entitled nor obliged to prefer any cross-objection. However, the insertion made in the text of sub-rule (1) makes it permissible to file a cross objection against a finding. The difference which has resulted we will shortly state. A respondent may defend himself without filing any cross-objection to the extent to which decree is in his favour; however, if he proposes to attack any part of the decree he must take cross-objection. The amendment inserted by the 1976 amendment is Clarificatory and also enabling and this may be made precise by analysing the provision. There may be three situations:

- (i) The impugned decree is partly in favour of the appellant and partly in favour of the respondent.
- (ii) The decree is entirely in favour of the respondent though an issue has been decided against the respondent.
- (iii) The decree is entirely in favour of the respondent and all the issues have also been answered in favour of the respondent but there is a finding in the judgment which goes against the respondent.

21. Thereafter, in Para-11, it has been held that in case type (i), it was necessary for the party to file an appeal or take cross objection against that part of a decree, which is against him. It is held that if a party wants to get rid of the part of the decree which is against him, he has to file a cross objection or an appeal. However, with regard to the case type (ii) and (iii), it has been held that the pre-amended CPC did not entitle nor permit the respondent to take any cross objection as he was not the person aggrieved by the decree. However, after the amendment to the C.P.C. and after reading it in the light of the sub-rule 4, the Supreme Court holds that even now it is not necessary for the respondent to take any cross objection for challenging any finding or issue adverse to him when the decree is entirely in his favour. It is held that in such case, he can support the decree without a cross objection. However, he has an option to file a cross objection to challenge such a finding or issue recorded against him and the advantage available to him on preferring such a cross objection has been

indicated in sub-rule 4, wherein certain advantages are available to him, even after the appeal is dismissed or withdrawn.

22. Having considered the contentions of the appellants with regard to the effect of Clause-8 of the Agreement, we are of the considered view that in view of the requirement of Section 9, once the limitation had started running, it cannot be arrested. That apart, Clause-8 does not pertain to extending the period of limitation. It only says that if there is any dispute with regard to the property or its title, then all losses that may be caused to the plaintiff would be borne by late Gulab Bai. This clause only says that in future, if any dispute or legal proceedings arise with regard to the property then, all expenses which may be incurred by the plaintiff shall be the responsibility of late Gulab Bai, which includes any loss for delay in registration also. This clause in no way can be construed to mean that it has the effect of enhancing the period for execution of the sale-deed beyond six months.

23. Accordingly, on a close scrutiny of the judgments as indicated hereinabove, we are of the considered view that for challenging a particular issue or a finding, which is against one of the parties, it is not necessary for that party to file a cross objection, the party can always challenge the finding in an appeal without filing a cross objection and that being the legal position, we are inclined to hold that the respondents are entitled to raise the question of limitation and challenge the finding with regard to this issue, even without filing of a cross objection. That being so, we have no hesitation in holding that the suit itself was barred by limitation and as the defendants have a right to challenge the finding, even without filing the cross objection, we have to uphold the objection raised by Shri Ravish Agrawal, learned Sr. Advocate and hold that the suit itself was not maintainable. Once we have come to such a conclusion, it is not necessary for us now to advert to consider other questions that were canvassed at the time of hearing. Once we find that the suit was not maintainable, it is not necessary for us to interfere with the judgment and decree passed. Accordingly, finding the appeal to be unsustainable in view of the findings recorded hereinabove, the same is dismissed without any order so as to cost.