
(2004) 05 P&H CK 0114

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1633 of 1982

Smt. Rajni

APPELLANT

Vs

Smt. Roshni and Another

RESPONDENT

Date of Decision : 27-05-2004

Acts Referred:

Limitation Act, 1963 — Article 27, 59, 6 , 6(5)

Citation : (2005) 1 CivCC 594 : (2004) 138 PLR 207 : (2005) 1 RCR(Civil) 60

Hon'ble Judges : M.M. Kumar, J

Bench : Single Bench

Advocate : Y.K. Sharma, for the Appellant; S.K. Garg, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—This order shall dispose of two cross appeals namely, R.S.A. No. 1633 of 1982 (for brevity, "1st case") and R.S.A. No. 759 of 1982 (for brevity, "IInd case"). Both the appeals are the result of cross suits filed by the parties against one and another. The Trial Court has dismissed both the suits with costs vide its judgment dated 3.10.1980 and the learned Additional District Judge, Kurukshetra has further dismissed the appeals vide his judgment and decree dated 6.2.1982. Feling aggrieved, the Parties have approached this Court by filing the appeals u/s 100 of the Code of Civil Procedure, 1908 (for brevity, "the Code").

Appeal filed by Rajni Bala; [Ist case]

2. The appeal filed by Smt. Rajni i.e. R.S.A. No. 1633 of 1982 has arisen from Civil Suit No. 101 of 1977. Smt. Rajni is widow of one Hardutt. She filed Civil Suit No. 101 of 1977 on 4.4.1977 against Smt. Roshni widow of Mohinder Singh son of Mann Singh and Smt. Kanti wife of Man Singh son of Datta Ram seeking a declaration to the effect that she was exclusive owner of land measuring 255 kanals 13 marlas, situated at village Chandana. She claimed that Smt, Roshni and Smt. Kanti have no concern with the land which is fully described in para 1

of the plaint. She has also asserted that her husband Hardutt died in 1952 and being widow and the sole legal heir, she succeeded to his estate which included the suit land. By operation of Section 14(1) of the Hindu Succession Act, 1956, she became its absolute owner. The suit land was allotted to her after consolidation in lieu of the old land held by her.

3. It is further alleged that the husband of Roshni, Mohinder Singh and husband of Smt. Kanti, Man Singh were collaterals of Hardutt, the deceased husband of Rami. Mohinder Singh and Man Singh filed a civil suit for a declaration on 16.4.1957 in the Civil Court at Kaithal alleging that Smt. Rajni had performed a Kareva marriage with Man Singh as a result of which she had forfeited all her rights and interests in the property of her deceased husband Hardutt. The suit was dismissed on 17.2.1958. It is averred that on the same day i.e. 17.2.1958, Man Singh alleged to have got a gift deed executed (Ex.D-3) fraudulently from her in favour of his son Mohinder Singh, who is the husband of Smt. Roshni. It was further alleged that Smt. Rajni had adopted Mohinder Singh as her son. The gift deed was said to have been executed in lieu of the services rendered by Mohinder Singh to Smt. Rajni. The gift deed dated 17.2.1958 has been challenged on the ground of fraud and therefore, it is illegal and void. It has further been asserted that the land has been in possession of Rajni. According to further averments, Rajni came to know about the execution of the gift deed in the year 1972 when she obtained copies of the revenue records. Thereafter, she filed Civil Suit No. 1253 of 1972 on 13.7.1972 against Mohinder Singh in the civil Court at Kaithal for declaration and permanent injunction. According to the averments made in the suit plaintiff-appellant Smt. Rajni had alleged in the plaint (Ex.D-12) that according to the family settlement dated 15.6.1969 Mohinder admitted her to be owner of 1/2 share of the suit land and delivered her possession thereof. As mutation could not be entered, Mohinder Singh has been trying to take forcible possession. Mohinder Singh filed a written statement (Ex.D2) admitting her whole claim and a decree (Ex.D7) was passed in her favour declaring her owner of the suit land to the extent of 1/2 share. She has claimed in the suit that in fact even the aforementioned decree was obtained fraudulently and was liable to be set-aside.

4. Mohinder Singh died in 1975 and was survived by his wife Smt. Roshni, his mother Kanti defendant-respondent No. 1 and a minor daughter Vidya. Mutation of inheritance was sanctioned in favour of defendant-respondents Roshni and Smt, Kanti defendant-respondent No. 2. In the alternative, it is claimed that if the adoption of Mohinder Singh by the plaintiff-appellant Smt. Rajni is upheld and further the gift deed dated 17.2.1958 is also upheld as valid, then Mohinder Singh would be deemed to be the owner of 1/2 share if the decree passed on 15.7.1972 in Civil Suit No. 1253 of 1972 is also upheld. In other words, alternative relief has been sought on the ground that the plaintiff-appellant of 1st case being mother of Mohinder Singh who was owner of 1/2 share at the lime of death of Mohinder Singh in 1975, would be entitled to 1/3 share of the land owned by him or 1/6 share from the entire suit land being the heir of Mohinder

Singh under the provisions of Hindu Succession Act. Smt. Vidya, daughter of Mohinder Singh died unmarried and her share devolved on her mother Roshni who have become owner, of 1/3 share out of the 1/2 share of the entire land of Mohinder Singh. On the aforementioned basis, the plaintiff-appellant have sought a declaration to the effect that she is owner in possession of the suit land or in the alternative, that she is owner of 2/3 share of the suit kind as detailed above with consequential relief of joint possession.

5. In the joint written statement filed by the defendant-respondents, two principal pleas were raised. It was pleaded that the plaintiff-appellant had earlier filed Civil Suit No. 430 of 1976 for declaration and joint possession (Ex.D1) against the defendant-respondents in respect of the suit land which was dismissed in default by Civil Judge, Kaithal on 14.3.1977. On that basis, the plea of estoppel has been raised asserting that the claim made was for ownership of 1/2 share of the suit land and, therefore, Smt. Rajni was estopped from claiming that she was owner of the whole suit property. The plea of res judicala was also raised. It has further been asserted that the suit was time barred as the suit land was gifted by the plaintiff-appellant to Mohinder Singh by a validly executed gift deed dated 17.2.1958. The plaintiff-appellant has claimed herself to be the adoptive mother of Mohinder Singh (husband of defendant-respondent 1 and real son of defendant-respondent 2) as would be clear from the averments made in the plaint filed in Civil Suit No. 430 of 1976. It is claimed that Mohinder Singh was never adopted by the plaintiff-appellant. No ceremonies of adoption were ever performed and she has gifted the suit land to Mohinder Singh on her free volition. The possession was also delivered. It has further been asserted that the judgment and decree dated 15.7.1972 in Civil Suit No. 1253 of 1972 giving half share out of the suit land to the plaintiff-appellant is also void as Mohinder Singh was a minor, it is further claimed that Mohinder Singh was a minor and the decree based on compromise is liable to be declared as void and even mutation sanctioned in favour of the plaintiff-appellant is liable to be set-aside. Appeal filed by Smt. Roshni & Smt. Kanti [IIInd Case]

6. Smt. Roshni and Smt. Kanti have filed Civil Suit No. 317 of 1997, seeking a declaration and possession in respect of 1/2 share of the land measuring 255 kanals 13 marlas on the basis that the judgment and decree passed in Civil Suit No. 1253 of 1972 in favour of Smt. Rajni and against Mohinder Singh is void ab initio. It is alleged that Mohinder Singh being a minor could not have consented for passing of a consent decree. It is stated that the date of birth of Mohinder Singh was 18.1.1955. It is alleged that the decree was obtained from Mohinder Singh fraudulently because he was asked to make a statement before the Court that there was no other heir of the suit land except Smt. Rajni. The statement made by Mohinder Singh that there was a family settlement has also been assailed on the ground that a minor could not have entered into any family settlement. The registered lease deed dated 27.4.1970 executed in favour of one Gurcharan Singh defendant-respondent 2, has also been challenged on the ground that once the decree dated 13.7.1972 is declared as null and void, the

lessee defendant-respondent 2 would also not acquire any right under the lease-deed. The suit was opposed by Smt. Rajni, defendant-respondent.

Findings of the Courts below in Ist Case

7. The Civil Judge by a detailed judgment came to the conclusion that the gift dated 17.2.1958 was a voluntary act of Smt. Rajni, plaintiff-appellant in the 1st case as she was fully aware of what she had done. The basis of the aforementioned finding is that in the plaint filed in Civil Suit No. 430 of 1976 instituted on 19.10.1976 Ex.D1, Smt. Rajni herself sought a declaration claiming that she being adoptive mother of Mohinder Singh had succeeded to 1/3 share of Mohinder Singh on his death. A copy of the plaint has been exhibited as Ex.D1 and the suit was dismissed on 14.1.1997 vide Ex.D6. The fact of execution of the gift deed stood admitted by the plaintiff-appellant Rajni and Mohinder Singh was conceded to be the owner to the extent of 1/2 share of the suit hind. Similarly, Civil Suit No. 1253 dated 13.7.1972 was filed by Smt. Rajni against Mohinder Singh, seeking a declaration to the effect that she was owner of 1/2 share of the suit land on the basis of family settlement. Ex D2 is the copy of the written statement filed by Mohinder Singh in that suit. The suit was decreed on 13.7.1972 and a copy of the judgment and decree are Exs.D7 and D8 and the copy of the statement made by Mohinder Singh in that case is Ex.D9. The views of the learned Civil Judge on this issue read as under:-

"16. In the light of the above discussion, I am of the considered opinion that Smt. Rajni had voluntarily executed the gift deed dated 17.2.1958, Ex.D3 and the same was not got executed from her as a result of any fraud committed by the defendants or any other person. During the course of arguments, the learned counsel for the plaintiff also referred to Mahendra Manilal Nanavati Vs. Sushila Mahendra Nanavati, and Muharram Ali and Anr. v. Barkat Ali and Anr. A.I.R.1930 Lah 695. I do not think it necessary to discuss in detail the observations made in those cases, suffice it to say her [sic? here] that the observations made in the said authorities are not applicable to the facts of this case. I, therefore, decide this issue against the plaintiff."

8. It has also been held by the learned trial Court that the plaintiff-appellant Rajni was not a Parda Nashin lady and she has failed to lead any evidence to prove her assertion that she was a Parda Nashin lady. It has also been held that me judgment and decree dated 15.7.1972 passed in Civil Suit No. 1253 of 1972 Exs.D7 and D8 were not result of fraud played on the plaintiff-appellant (1st case) Smt. Rajni. The plaintiff-appellant has been found to be owner in possession to the extent of 1/2 share out of the land measuring 255 kanals 13 marlas. On the ground that there was no evidence showing that Mohinder Singh was ever adopted by the plaintiff-appellant, it has been declared that she is not adoptive mother of Mohinder Singh.

9. Even otherwise, the suit has been found to be barred by time. In so far as challenge is raised to the gift deed dated 17.2.1958, it has been held that a

period of 3 years has been provided under Article 59 of the limitation Act, 1963 (for brevity, "the Act") and that the period of 3 years is to be reckoned from the time when the facts concerning fraud and mis-representation or undue influence came to the knowledge of the plaintiff-appellant (1st case). In Civil Suit No. 1253 filed on 13.7.1972 by the plaintiff-appellant, it has been admitted that she was owner in possession of the suit land to the extent of 1/2 share on the basis of a family settlement. A copy of the plaint filed in that suit is Ex.D12 and it depicts that the plaintiff-appellant was fully aware of the gift deed dated 17.2.1958, The suit from which the instant appeal has arisen was filed on 4.4.1977, much after the expiry of 3 years as provided by Article 59. Therefore, it has been held to be time barred. Consequently, the suit filed by Rajni plaintiff-appellant of the 1st case was dismissed and the appeal preferred by her was also dismissed by the learned Additional District Judge, Kurukshetra. The views of the learned Additional District Judge while upholding the findings recorded by the trial Court read as under:-

"13. I find no force in the arguments of the learned counsel for the appellant. In the suit, which was filed on 1.4.77 i.e. more than 19 years of the said gift, no particulars of fraud etc. have been given. Furthermore, from the mere statement of the plaintiff Smt. Rajni appearing as PW1, it cannot be held that she was Purdah Nashin lady, when she had been appealing and filing various suits in the civil courts viz. plaint Ex.DX in the year 1957, Ex.D12 in the year 1972 Ex.D1 in the years 1976 and then the present suit in the year 1977, DW5 Man Singh admitted that Smt. Rajni used to observe purdah from him, but that was only, because he was elder to her and in the villages, ladies generally observe Purdah from their elders. Similar is the position with regard to DW7 Moman, who stated that since he was elder to her, she used to observe purdah from him. Thus I hold that it is not proved on the record that Smt. Rajni was a purdah Nashin lady. 14. The execution of the gift deed Ex.D3 by Smt. Rajni is proved on the record, by the statements of DW5 Man Singh and DW6 Lok Nath who had scribed the same. The mere statement of Smt. Rajni as PW1 that she had not executed the gift deed, would not be sufficient, when the said document is a registered document, especially when, the suit has been filed after about 19 years of the said gift deed. Accordingly, I am of the opinion that the gift deed Ex.D3 is perfectly legal and valid and binding on Smt. Rajni.

15. No other point has been urged before me.

16. For the reasons, recorded above, the appeal Smt. Rajni Versus Smt. Roshni etc. is also hereby dismissed, but with no order as to costs." Findings of the Courts below in IInd case

10. The Civil Judge in respect of the suit filed by Smt. Roshni and Smt. Kami has held that although Mohinder Singh was owner, but on account of the judgment and decree dated 15.7.1972 Smt. Rajni defendant-respondent (IInd case) was declared as owner in possession to the extent of 1/2 share. The decree was held to be valid despite the fact that it was passed against Mohinder Singh who was

minor at that time and consequently it was held that Smt. Rajni was in possession of 1/2 share of the entire suit land. It has further been held that Mohinder Singh who was a minor but he had admitted correctness of the decree dated 15.7.1972 after attaining majority as he failed to challenge its validity till his death in the year 1975. The date of birth of Mohinder Singh is alleged to be 18.1.1955 and the judgment and decree is dated 15.7.1972. Obviously, he was less than 18 years of age. He is admitted to have died in the year 1975 and it proves the fact that he had attained majority on 18.1.1973. Having failed to challenge the judgment and decree after attaining the age of majority and before his death, the said decree has been held to be binding on him like his widow Smt. Roshni and Smt. Kanti. The suit is held to be barred by limitation under Article 59 of the Act as the judgment and decree dated 15.7.1972 could have been challenged within a period of three years of attaining majority which comes to 18.01.1976 because Mohinder Singh attained majority on 18.1.1973. However, the suit was filed on 10.8.1977, much later than the period of three years. The aforesaid view of the learned Civil Judge has been accepted by the learned Additional District Judge which reads as under:-

"9. I find no force in the submissions of the learned counsel. Under the provisions of the Limitation Act, it is the duty of the court to see that a particular suit is within limitation or not. As per birth certificate Ex.D10, it is proved that Mohinder Singh was born on 18.1.1955 and was a minor at the time of the passing of the decree Ex.D9 on 15.7.1972. Under the Limitation Act, he could himself file the suit within three years of his attaining the majority i.e. on or before 18.1.1976. However, he died prior to the said date. Accordingly, his legal heirs could also file the suit by the said date and the period of limitation would not be extended by his death. It is well settled that once the period of limitation starts running, it will not stop and cannot be kept in abeyance. The present suit was filed by the widow and mother of Mohinder Singh, on 11.8.1977; i.e. much after the expiry of limitation. It has been admitted by Smt. Roshni (widow) appearing as DW4 and DW5 Man Singh (father) that since 1972, Smt. Rajni was in possession of the suit property. That being so, it cannot be urged by the learned counsel for Smt. Roshni etc. that they filed suit only when their possession was disturbed."

Arguments in Ist Case

11. Mr. Y.K. Sharma, learned counsel for the plaintiff-appellant Rajni (1st case) has argued that she is entitled to a declaration being the exclusive owner of the whole property. Apart from the gift deed dated 17.2.1958 purported to be executed by the plaintiff-appellant Rajni in favour of Mohinder Singh, there is nothing on the record to prove any right of Mohinder Singh to become owner of the land. Referring to the gift deed Ex.D3, the learned counsel has argued that in the aforementioned document, the plaintiff-appellant has been declared to be the adoptive mother and on account of being the mother and services rendered by Mohinder Singh to the plaintiff-appellant Rajni, the land was gifted out of love

and affection. The learned counsel has argued that one of the two situations has to be considered as correct, namely either the plaintiff-appellant has to be considered as an adoptive mother on the basis of the gift deed Ex.D3 dated 17.2.1958 and on that basis, the plaintiff-appellant is deemed to have given her entire land to Mohinder Singh. Thereafter, Mohinder Singh has given back 1/2 share of the entire land to the plaintiff-appellant by a decree dated 15.7.1972 which Mohinder Singh has suffered in Civil Suit No. 1253 of 1972. Once it is accepted that Mohinder Singh was owner to the extent of 1/2 share on the basis of judgment and decree dated 15.7.1972 Exs.D7 and D8 then the plaintiff-appellant Rajni has to be held as a share holder after the death of Mohinder Singh to the extent of 1/3 share in addition to the share of Roshni and Kanti. According to the learned counsel, both the Courts below have committed grave error in law by dismissing the suit of the plaintiff-appellant for the entire suit land or at least for 1/3 share of the suit land held by Mohinder Singh. The learned counsel has drawn my attention to the recitals made in the gift deed Ex.D3. The learned counsel has further argued that as a matter of fact, after the death of Hardutt, the husband of the plaintiff-appellant, Mohinder Singh and his father Mann Singh became very greedy who were keeping an eye on her land. Mann Singh has already been non-suited in his suit which he filed claiming that there was a Karewa marriage and the plaintiff-appellant had already forfeited her rights in the suit land. That suit was dismissed on 17.2.1958 and on that very day, a gift deed was fraudulently got executed and later on the plaintiff-appellant of 1st case has been trapped into various transactions. According to the learned counsel, firstly the suit was got decreed on 15.7.1972 fraudulently and 1/2 share was got conceded against the plaintiff-appellant which continues to be in her possession. She has already leased the land vide registered lease deed in favour of defendant-respondent 2 (IInd case) Gurcharan Dass.

12. Mr. S.K.. Garg, learned counsel for Smt. Roshni and Suit. Kanti has drawn my attention to the averments made in para 2 of the plaint filed by Smt. Roshni and Smt. Kanti and its reply in corresponding para and also to the written statement filed by them in the cross suit filed by Smt. Rajni. The learned counsel has referred to Ex.D12, a copy of the plaint filed in Civil Suit No. 1253 of 1972 and also to the written statement filed by Mohinder Singh, admitting his whole claim. Referring to the averments made in para 2 of the plaint, the learned counsel has pointed out that in para 2 a reference has been made to a family settlement dated 15.6.1969, wherein it has been admitted by the plaintiff-appellant of 1st case Smt. Rajni that Mohinder Singh who is her nephew has been owner of the whole suit land and in the family settlement, 1/2 share was given to Smt. Rajni. The learned counsel has also referred to the finding recorded by the Courts below that Mohinder Singh was a minor on 13.7.1972 when the suit was filed against him and subsequently on 15.7.1972, the suit was decreed. The learned counsel has insisted that the aforementioned decree has been obtained by misrepresenting a minor as a major and the transfer is a nullity because it is a fraud played on the Court and the Supreme Court does not approve of a decree

obtained by fraud. The learned counsel has placed reliance on the view taken by the Supreme Court in the case of S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, and a judgment of the Bombay High Court in the case of Ramjisingh Bhuliansing v. Turun K. Shah and Ors.? 2002(2) R.C.R. 640. He has also referred to Sections 8 and 11 of the Hindu Minority and Guardianship Act, 1956 (for brevity, "1956 Act") and argued that in the absence of appointment of any guardian by the Court, the Court was not competent to deal with the property of a minor. According to the learned counsel, even a natural guardian u/s 8 of 1956 Act is debarred from mortgaging, transferring by sale or lease any part of the immovable property of the minor without the previous permission of the Court. In this regard, the learned counsel has placed reliance on a judgment of the Supreme Court to the case of Ram Chandra Arya Vs. Man Singh and Another, and Ningawwa Vs. Byrappa and Others, and argued that in such cases the starting point of limitation is when the fraud becomes known to the party. The learned counsel has placed reliance on Article 60 of the Limitation Act, 1963 and argued that the period of three years would start from the date of knowledge of the guardian and not from the date of attaining majority by Mohinder Singh. He has also placed reliance on another judgment of the Supreme Court in the case of United India Insurance Co. Ltd. v. Rajindra Singh and Ors. (2000 125 P.L.R. 787 (S.C.)).

13. After hearing the learned counsel for the parties, I am of the considered view that both the appeals are liable to be dismissed. In the appeal filed by Smt. Rajni, both reliefs claimed by Smt. Rajni have to be repelled because firstly she had gifted the whole property to Mohinder Singh predecessor-in-interest of Smt. Roshni and Kanti vide gift deed dated 17.2.1958 Ex.D3. Thereafter, she filed Civil Suit No. 1253 of 1972 on 13.7.1972 against Mohinder Singh claiming that she was owner to the extent of 1/2 share. On the filing of written statement by Mohinder Singh accepting her claim, the suit was decreed on 25.7.1972. Thereafter, it is too late for the plaintiff-appellant to claim that the gift deed was the result of fraud and mis-representation. The other claim could also not be made that the judgment and decree was obtained by fraud and misrepresentation. Moreover, another civil suit was filed by her challenging the judgment and decree dated 15.7.1972 which was dismissed in default on 14.3.1977. In that suit it was admitted that Mohinder Singh was owner of 1/2 share. according to Article 59 of the Act, a period of three years has been provided for cancellation or for setting aside an instrument or a decree. The period of three years has to begin from the date the plaintiff-appellant has acquired knowledge about the facts which entitle him to have the instrument or decree cancelled or set-aside. It is not disputed that in Civil Suit No. 430 of 1976 instituted on 19.10.1976 Ex.D1, the plaintiff-appellant Suit. Rajni herself sought a declaration claiming that being adoptive mother of Mohinder Singh, she is entitled to succeed to 1/3 share in the property of Mohinder Singh on his death. The suit was dismissed in default on 14.3.1977 Ex.D6. Similarly, Civil Suit No. 1253 of 1972 was filed by the plaintiff-appellant for a declaration to the effect

that she was owner to the extent of 1/2 share of the suit land on the basis of a family settlement. The suit was decreed on 15.7.1972. The gift deed executed in 1958 or the decree dated 15.7.1972 have not been challenged in the earlier suits. In other words Smt. Rajni accepted both the documents as correct. Therefore, it cannot be held either the gift deed dated 17.2.1958 or the decree dated 15.7.1972 was the result of fraud or mis-representation.

14. Even otherwise, the suit having been filed after an inordinate delay and is barred by limitation, Smt. Rajni has herself asserted that she came to know about the gift deed dated 17.2.1958 when she obtained copies of the revenue records in 1972. Therefore, it has been rightly held by both the Courts below that the suit is barred by time in the Ist case.

15. The appeal in IIInd case filed by Smt. Roshni and Smt. Kanti is also liable to be dismissed because the judgment and decree dated 15.7.1972 could have been challenged by filing a civil suit within a period of three years after Mohinder Singh had attained majority. It is admitted position that the date of birth of Mohinder Singh is 18.1.1955 and the judgment and decree was passed on 15.7.1972. Mohinder Singh attained majority on 18.1.1973 and he could have challenged the judgment and decree on or before 18.1.1976. Similarly in case of his death, after attaining majority, the suit could have been filed by any of his legal representative within the same period of limitation which would commence from the date of attaining majority by Mohinder Singh. Once the period of limitation starts running, it does not stop. As per the provisions of Section 6(5) of the Act read with Article 59, when a person under disability dies after the censing of the disability but within the period allowed to him for filing a suit, his legal representatives could institute the suit within the same period as would have been otherwise available to that person had he not died. Section 27 of the Act stipulates that the right itself is extinguished once the period of limitation comes to an end. Sections 6 and 27 of the Act along with Article 59 are reproduced hereunder for facility of reference:-"Section 6. Legal disability.-(1) to (4)

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(5) Where a person under disability dies after the disability ceases but within the period allowed to him under this section, his legal representatives may institute the suit or make an application within the same period after the death, as would otherwise have been available to that person had he not died.

Section 27 Extinguishment of right to property.- At the determination of the period hereby limited to any person for instating a suit for possession of any property, his right to such property shall be extinguished.

Article 59. To cancel Three years When the facts or set aside an entitling the instrument or plaintiff to have the decree or for the instrument or decree rescission of a cancelled or set contract. rescinded first become known to him."

16. A perusal of Section 6 of the Act makes it clear that once the legal disability

has ceased then the time for tiling the suit as mentioned in the third column of the Schedule to the Act, would start running. The death of a person after attaining majority would not give a fresh lease of limitation to his legal representatives as is apparent from a perusal of Section 6(5) of the Act. The right of such a person stand extinguished by virtue of Section 27 of the Act.

17. The aforementioned provision came up for consideration before the Supreme Court in the case of Darshan Singh and Ors. v. Gurdev Singh (1999)109 P.L.R. 241 (S.C.). The argument that a period of 12 years after attaining majority by virtue of Section 6 read with Article 65 would be available in a title suit, was rejected. In that case, the plaintiff was minor at the time of death of his father and he attained majority on 17.4.1977. He filed a suit for possession in respect of the suit properly on 4.11.1982 by placing reliance on Article 65 of the Schedule to the Act. He claimed that the suit having been filed within a period of 12 years, was within the stipulated period of limitation. The Supreme Court rejected the contention and observed as under:-

"4. In other words, Section 8 is a proviso to Section 6 or 7. A combined effect of Sections 6 and 8 read with third column of the appropriate article would be that a person under disability may sue after cessation of disability within the same period as would otherwise be allowed from the time specified therefore in the third column of the Schedule but special limitation as an exception has been provided in Section 8 laying down that extended period after cessation of the disability would not be beyond three years from the date of cessation of the disability or death of the disabled person. Take for instance, if a minor acquires a cause of action to sue for possession of immovable property but due to being minor, Section 6 aids him to lay the suit within the same period of 12 years after attaining majority. Suppose he dies, his legal representatives would be entitled to lay the suit within three years from the date of his attaining majority though he may die after the expiry of three years since his right to file the suit is extended only upto three years from the date of his attaining majority. In other words, cessation of disability or death whichever occurs earlier, The date of death of disabled person does not provide further extended cause of action, a period beyond three years after the disability ceases and death. Take another instance, where cause of action for possession has arisen when the minor was at the age of 16 years. On his attaining majority, he gets three years period but Article 65 Column 3, gives him the right to file a suit within a twelve years from the date of defendant acquires prescriptive title. His cessation of disability and expiry of three years u/s 8 does not take away his right to file the suit within 12 years under Article 65, In other words the benefit of Section 6 is available to him. Take a third case, where the cause of action had arisen to a minor when he was at the age of 4 years. During his majority, the 12 years prescriptive period expired by efflux of time at his attaining 16 years but on his becoming major, his disability ceases. Therefore, he gets a further period of three years from the date of cessation of disability to file a suit for recovery of the possession from the defendant who claims adverse possession to the plaintiff. Thus considered

Section 8 is a special exception to Section 6 or 7 and the period of limitation though barred u/s 3, remained available to persons under disability specified in Section 6 or 7 and the right to lay the suit or application after disability ceased u/s 6 or 7 is regulated by the limitation prescribed by Section 8".

Similar view has been taken by the Supreme Court in the case of Bailochan Karan Vs. Basant Kumari Naik and Another, . Therefore, I am of the considered view that the view of both the Courts below holding that the suit is barred by time, is a correct view. It is supported by statutory provisions, precedents and principles.

18. The argument based on the judgment of the Supreme Court Ram Chandra Arya's case (supra) and Ningawwa case (supra) that the period of limitation would commence from the date of acquiring knowledge of fraud cannot be accepted because on facts it has been found that Mohinder Singh attained majority on 18.1.1973 and he could have challenged the judgment and decree on or before 18.1.1976. It is further appropriate to mention that on the basis of the family settlement Smt. Rajni had leased the land to Sh. Gurcharan Dass who is defendant-respondent No. 2 in the IInd case vide registered lease deed dated 27.4.1970. Therefore, it is not a case of fraud and misrepresentation as suggested by the learned counsel for the plaintiff-appellant of the IInd case. It is a simple case of minor failing to challenge the judgment and decree suffered by him after attaining majority and after his death the suit became time barred.

19. The judgment in the case of Ningawwa (supra) would also not be of any help to the plaintiff-appellant in IInd case because in that case the question was whether a document would be void or voidable if it has been obtained by misrepresentation as to its character or its contents respectively. There is no allegation of misrepresentation or fraud with regard to the character or contents of a document which might have been practised by the plaintiff-appellant of the 1st case on Mohinder Singh, predecessor in interest of the plaintiff-appellant of the IInd case. Moreover, the judgment in Ningaww's case (supra) has been overruled by the Supreme Court in the case of Smt. Bismillah v. Janeswar Prasad AIR 1990 S.C. 540. In this regard reference may also be made to a judgment of this court in the case of Hamelo (Deceased) Vs. Jang Sher Singh, which illustrates various facts of this proposition. It is extremely unfair and inappropriate for the plaintiff-appellants of the IInd case to allege fraud or misrepresentation. On a closer look it would transpire that fraud might have been played on Smt. Rajni the plaintiff-appellant in the 1st case. When the suit filed by Maan Singh husband of Smt. Kanti was dismissed on 17.2.1958, how Rajni the plaintiff-appellant in 1st case could have executed a gift deed on the same date. There is indication of fraud on her. But because of delay and subsequent admission by Smt. Rajni the question has not been reopened. Therefore, no interference in the view taken by the Courts below is called for. Moreover, concurrent findings of facts have been recorded by both the Courts below and u/s 100 of the Code, this court would not enter into the area of re-appreciation of

evidence and then record a different conclusion. The appeals are without any merit and are thus liable to be dismissed.

20. For the reasons recorded above, both the appeals fail and are dismissed. However, the appeal filed in the IInd case, namely, R.S.A. No. 759 of 1982 is dismissed with cost which is assessed to be Rs. 20,000/-. the plaintiff-appellant of R.S.A. No. 759 of 1982 shall pay cost to the plaintiff-appellant of R.S.A. No. 1633 of 1982.