

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 15TH OF MARCH, 2024

CIVIL REVISION NO. 732 OF 2022

BETWEEN:-

**SMT. RICHA BARSAIYYA, W/O SHRI MAHESH
KUMAR BARSAIYYA, AGED 49 YEARS,
OCCUPATION- HOUSE WIFE, R/O NEAR
AKASHWANI TIRAHA, WARD NO. 30, DISTRICT
AND TEHSEEL CHATTARPUR.**

....PETITIONER

(BY SHRI MANIKANT SHARMA - ADVOCATE)

AND

- 1. SHIVAM MISHRA, S/O SITARAM MISHRA,
AGED 27 YEARS, OCCUPATION-BUSINESS,
R/O VILLAGE CHANDRAPURA, TEHSEEL
AND DISTRICT CHATTARPUR.**
- 2. SMT. UMA DIXIT, W/O KRISHNA KUMAR
DIXIT, AGED 65 YEARS, R/O SUNDARAM
COLONY, WARD NO. 10, TAMRAI
MOHALLA, CHATTARPUR, TEHSEEL AND
DISTRICT CHATTARPUR.**
- 3. SITARAM MISHRA, S/O LATE MANMOHAN
MISHRA, AGED 56 YEARS, R/O VILLAGE
CHANDRAPURA, TEHSEEL AND DISTRICT
CHATTARPUR.**
- 4. STATE OF M.P. THROUGH COLLECTOR,
DISTRICT CHATTARPUR.**

....RESPONDENTS

(NO.1 BY SHRI SIDDHARTH GULATI – ADVOCATE)

(NOS. 2 AND 3 BY NONE THOUGH SERVED)

(NO.4 BY SHRI DEEPAK TIWARI – PANEL LAWYER)

Reserved on : 24.01.2024

Pronounced on: 15.03.2024

This petition having been heard and reserved for orders, coming on for pronouncement this day, the Court pronounced the following:

ORDER

This is a revision under Section 115 of the Code of Civil Procedure challenging the validity of the order dated 05.11.2022 passed by the XI Additional Judge to the court of I Civil Judge Junior Division Chhatarpur in RCS-A/74/2020 whereby the application filed by the petitioner/defendant under Order 7 Rule 11 of the Code of Civil Procedure for rejecting the plaint on two counts; first the suit is under valued and second the suit is barred by time because, according to the defendants, from the pleadings itself it is clear that the suit is barred by time, has been rejected.

2. Shri Sharma, appearing for the petitioner/defendant submitted that from the plaint i.e. Annexure P/2 filed by the respondent No. 1/plaintiff and the relief claimed therein it is clear that the sale deed dated 28.09.2006 is sought to be declared void and that suit has been filed on 09.07.2020 whereas from the plaint and pleading made therein itself it is clear that the plaintiff attained majority on 14.07.2013, as has been pleaded in para-2 of the plaint. He submitted that as per Article 60 of the Limitation Act, 1963, the limitation for cancelling the sale deed and for filing a suit by a minor after attaining the age of majority is three years from the date of attaining the majority. As such, he submitted that the suit is barred by time.

3. Shri Sharma has also submitted that although in the relief clause the plaintiff has sought declaration with regard to half of the property sold but he submitted that the said relief cannot be granted because the sale deed cannot be declared void in portion and this relief, according to him, has been claimed cleverly just to bring the suit within limitation, however from the all-in-all facts and circumstances, as have been pleaded in the plaint, it is clear that the suit is barred by time because the sale deed by which the property in question was purchased that was in the name of plaintiff himself.

4. To validate his contention, Shri Sharma placed reliance upon the judgments reported in **2014 (1) MPWN 124-Saurabh v. Mohakam Singh & others, (2020) 7 SCC 366 – Dahiben vs. Arvindbhai Kalyanji Bhanusali (Gajra) Dead through Legal Representatives and others** and **(2020) 16 SCC 601 – Raghwendra Sharan Singh vs. Ram Prasanna Singh (Dead) by Legal Representatives.**

5. In rebuttal to the submission made by Shri Sharma, Shri Gulati, appearing for the respondents, submitted that the suit is only in respect of the share over the land which was sold by the father of the plaintiff/respondent No.1 claiming himself to be the owner of half of the property, which got purchased in the name of the plaintiff and contained the total area i.e. 1.008 hectare. He submitted that the land purchased by the sale deed in question in favour of the plaintiff by his father does not reveal that the property was purchased in the joint name, but it was purchased solely in the name of the plaintiff though he was a minor at that time, therefore, the name of the father was shown as Bali. He has submitted that the said sale deed is part of the connected petition i.e. Misc. Petition No. 245/2021 and filed as Annexure P/1 and from the said sale deed it can be seen that the purchaser was the plaintiff, aged

about 11 years.

6. Shri Gulati further submitted that the father of the plaintiff/respondent No.1 executed the sale deed in the year 2006 in favour of the petitioner and that sale deed Annexure P/1 to the civil revision makes it clear that the sellers were plaintiff himself and his father i.e. Sitaram Mishra. He submitted that from the said sale deed it can be presumed that the father of the plaintiff claimed himself to be the owner of half of the property and therefore he executed the sale deed alongwith the plaintiff who at the relevant point of time was minor and therefore by filing the suit the plaintiff is claiming relief for declaration of the said sale deed to be null and void to the extent it relates to half of the portion of the land in question, which, according to him, was sold by his father fraudulently. He submitted that since the land was purchased by the father solely in the name of Shivam Mishra i.e. plaintiff, therefore the sale deed should have been executed in the same manner. If it is not done, it is clear that the father of the plaintiff fraudulently executed the sale deed claiming himself to be the owner of half of the portion of the land and therefore in the suit filed by him the plaintiff has confined the relief to the extent that the sale made by his father be declared void. He has submitted that consequently the limitation would govern by Article 59 instead of Article 60 of the Limitation Act. He also submitted that under such a circumstance, if Article 59 governs the suit then the cause of action, as pleaded in the plaint, would begin from the date of knowledge and that has been mentioned in paragraphs 4 and 8 of the plaint that the plaintiff came to know about the said sale only on 05.06.2020 and as such the suit is well within the limitation.

7. Shri Gulati appearing for the respondents very fairly submitted that if this Court comes to the conclusion that the suit governs with

Article 60 of the Limitation Act then the suit is barred by time, but, according to him, the suit governs with Article 59 of the Limitation Act and as such it is well within limitation reason being the limitation starts from the date of knowledge. He submitted that as per the pleading made and cause shown in the plaint, the suit is well within limitation. However, Shri Sharma appearing for the petitioner/defendant submitted that the averments made in the plaint itself make it clear that it was a suit by a minor seeking setting aside of the sale made by his guardian father during his minority and as such Article 60 of the Limitation Act would be applicable, which provides the limitation three years from the date of attaining majority.

8. As per the submission made by the learned counsel for the parties and after perusal of record, the only question emerges to be determined whether the suit filed by the respondent No. 1/plaintiff governs with Article 59 or Article 60 of the Limitation Act.

9. Thus, before reaching to a logical conclusion, it is pertinent to mention the facts of the case, which are as under:

9.1 The suit property was purchased by the mother of the plaintiff out of her own income by a registered sale deed dated 28.01.2006 on a consideration of Rs. 1,28,500/-. The said land was recorded in the revenue record in the name of the plaintiff as owner and in possession of the land. The date of birth of the plaintiff is 14.07.1995 and he attained majority on 14.07.2013.

9.2 During the period when plaintiff was minor, his father, defendant No. 3-Sitaram Mishra, without seeking permission from any competent court sold half of the portion of the land in question to defendant Nos. 1 and 2 area measuring 1.000 hectare and 0.052 hectare by sale deed dated 28.09.2006. It is alleged that the said sale by father of the plaintiff was

without any right and the land was sold unauthorisedly.

9.3 According to the plaint averments, the plaintiff was not aware of the said sale and it was only on 05.06.2020 when he went to the land owned and possessed by him adjoining to the disputed land and tried to raise construction then only he came to know about the said sale, as defendants restrained him to raise construction and that was the first occasion when he came to know about the sale of the disputed land and that gave him cause of action and as such he filed the suit seeking decree of declaration that the sale deed dated 28.09.2006 by which his father sold half of the land be declared void and as he is the owner of the said property that declaration be accordingly made in his favour.

9.4 In the said suit, an application under Order 7 Rule 11 of CPC was filed by the present petitioner-defendant No.1 mentioning therein that from perusal of the sale deed by which the land was purchased by the plaintiff it is explicitly clear that the said sale deed does not contain any description about his mother, but it contains the fact that the sale got done in the name of natural guardian i.e. his father-defendant No.3-Sitaram Mishra. In the application, it is also mentioned that the mother was not residing with the father of the plaintiff and her financial condition was so weak that she was not in a position to purchase the land as she had no source of income. The plaintiff was totally dependent upon his father and used to reside with him. The father of the plaintiff purchased the said land in his own name and also in the name of plaintiff. It is further alleged in the application that father of the plaintiff was involved in the business of purchasing the land on lower rate and after dividing the land into big plots selling it on higher rate and as such the land purchased by him was sold by the plaintiff and his father by registered sale deed dated 28.09.2006 to defendant No.1 on a

consideration of Rs. 2,86,000/- and also to defendant No. 2 on a consideration of Rs. 20,000/- and from the amount received out of those sales, father of the plaintiff purchased another land by sale deed dated 09.01.2007 on a consideration of Rs. 1,40,000/- area admeasuring 0.841 hectare to make big plots by adding the said land. It is also mentioned in the application that the plaintiff and his father jointly sold the land to defendant No.1/petitioner and also handed over the possession of the same and now by filing a suit they are claiming decree of returning the land to the plaintiff. In the application it is also claimed that as per the averments made in the plaint, the land of minor was sold by his natural guardian-father and as such after seven years of attaining the majority, the minor filed a suit seeking declaration to declare the said sale void, but the suit is time barred because as per Article 60 of the Limitation Act, the period of limitation for filing a suit by a minor after attaining the majority is three years from the date of attaining the majority.

9.5 In the application it is contended by the petitioner/defendant that the natural guardian-father of the plaintiff sold the land to her, which was jointly in the name of the plaintiff and his father, but now the plaintiff is seeking declaration that the sale deed in respect of half of the said land be declared void. It is submitted that the said sale deed cannot be declared void in piecemeal and as such the suit is barred by time as the same has been filed after seven years from the date of attaining the majority by the plaintiff whereas the limitation is only three years.

9.6 After considering the application submitted by the petitioner/defendant under Order 7 Rule 11 CPC, the trial court passed an order on 05.11.2022, which is impugned in this petition and rejected the application on the ground that the question of limitation involved in the case is a mixed question of law and fact. The court observed that as

per the plaint, the plaintiff claimed that he acquired knowledge about the impugned sale deed only on 05.06.2020 and therefore the suit was well within limitation from the date of knowledge and this fact can be ascertained only after recording the evidence of the parties. Accordingly, the court rejected the application saying that at this stage it is not proper to reject the plaint only on the basis of an application filed under Order 7 Rule 11 CPC.

10. I have perused the record and also the order passed by the court below. There is no dispute that the question of limitation is a mixed question of law and fact, but on every occasion question of limitation is not required to be decided only after recording the evidence of parties and on the basis of admitted position the said application can be decided.

11. Here in the present case also the application filed by the petitioner/defendant under Order 7 Rule 11 CPC can be decided because the Court has to see whether the suit filed by the plaintiff governs with Article 59 or Article 60 of the Limitation Act. Undisputably, the date of birth of the plaintiff/respondent No.1 is 14.07.1995 and the date of his attaining the majority is 14.07.2013. The land, which is in dispute, purchased by sale deed dated 28.01.2006 and was sold by the father of the plaintiff on 28.09.2006. The sale deed dated 28.01.2006 is part of the connected petition i.e. MP No. 245/2021, which has been filed by the plaintiff/respondent No.1-Shivam Mishra. In the said petition, the sale deed dated 28.01.2006 is filed and marked as Annexure R/1 by the defendant Richa Barsiya, who is respondent No.1 in the said petition. The sale deed dated 28.09.2006, which is in question, is also available in the connected Misc. Petition as Annexure R/2 showing that the said sale deed was executed by the father of the plaintiff and also by plaintiff. The

father of plaintiff claimed himself to be the seller and guardian of the plaintiff in the said sale deed and the sale was made on a consideration of Rs. 2,86,000/-. The connected petition has been filed by the plaintiff challenging the order dated 11.01.2021 passed by the Commissioner, Sagar Division, Sagar in a revenue case arising out of the mutation proceeding got done by the revenue officer on the basis of sale deed dated 28.09.2006 recording the name of respondent No.1 over the land. In the said petition it is averred by the plaintiff that after attaining the majority he challenged the order dated 20.10.2006 before the SDO, Chhatarpur.

12. As per Article 60 of the Limitation Act, if a transfer is made by guardian of a property which is in the name of a minor then to set aside the said sale, suit can be filed within a period of three years from the date of attaining the majority by the minor. Article 60 of the Schedule of the Limitation Act provides as under:-

Description of suit	Period of Limitation	Time from which period begins to run
60. To set aside a transfer of property made by the guardian of a ward-		
(a) by the ward who has attained majority.	Three years	When the ward attains majority.
(b) by the ward's legal representative -		
(i) When the ward dies within three years from the date of attaining majority.	Three years	When the ward attains majority.
(ii) When the ward dies before attaining majority.	Three years	When the Ward dies.

13. In the present case, from the sale deed whereby the plaintiff acquired the right over the property in question, it is clear that the said land was purchased in the name of the plaintiff through guardian i.e. his father-Sitaram Mishra-defendant No. 3 and he had executed the sale deed as a guardian on 28.09.2006 and the relief has been claimed for setting aside the said sale deed by filing a suit on 09.07.2020 whereas the plaintiff attained majority on 14.07.2013. As such, the suit is beyond limitation.

14. In the case of **Saurabh (supra)** dealing with such issue the Court held as under:

“**10.** On perusal of the record and the judgment of both the Courts, it becomes clear that the plaintiff challenging the validity of the sale deed dated 22.12.1993 filed the suit after 11 years. As per allegations of the plaintiff, when the sale deed was executed, the plaintiff was sixteen years old. The aforesaid sale deed executed by his father as guardian during his minority without seeking permission under section 8(2) of Hindu Minority and Guardianship Act, 1956 is illegal and void against the plaintiff’s interest. Both the learned Courts below having discussed the evidence on record have arrived at the conclusion that the suit filed by the plaintiff is baseless and time barred as the suit ought to have been filed by the plaintiff under section 8 and Article 60 of the Limitation Act within three years after his attaining majority. As per plaintiff’s pleading, the plaintiff was 16 years old in the year 1993. On the basis of which he became major in 1995. Thus, the suit ought to have been filed in the year 1998 *i.e.* within three years from 1995 whereas, it was filed in 2004. As a result, the suit turned time barred, owing to which, the relief sought by the plaintiff cannot be given.”

In the case of **Dahiben (supra)**, the Supreme Court held that an application under Order 7 Rule 11 CPC can be decided if any of the grounds specified in Clause (a) to (e) are made out. It is also held that

the plaint shall be rejected if from the averments made in the plaint suit is barred by any law. The Court also observed as to when right to sue first accrues in favour of the plaintiff. In the said case, the Supreme Court observed as under:

“23.2. The remedy under Order 7 Rule 11 is an independent and special remedy, wherein the court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

23.3. The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

24. “Cause of action” means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment. It consists of a bundle of material facts, which are necessary for the plaintiff to prove in order to entitle him to the reliefs claimed in the suit.

24.2. In *T. Arivandandam v. T.V. Satyapal* [*T. Arivandandam v. T.V. Satyapal*, (1977) 4 SCC 467] this Court held that while considering an application under Order 7 Rule 11 CPC what is required to be decided is whether the plaint discloses a real cause of action, or something purely illusory, in the following words : (SCC p. 470, para 5)

“5. ... The learned Munsif must remember that if on a meaningful—not formal—reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing....”

(emphasis supplied)

24.3. Subsequently, in *ITC Ltd. v. Debts Recovery Appellate Tribunal* [*ITC Ltd. v. Debts Recovery Appellate Tribunal*, (1998) 2 SCC 70] this Court held that law cannot permit clever drafting which creates illusions of a cause of action. What is required is that a clear right must be made out in the plaint.

24.4. If, however, by clever drafting of the plaint, it has created the illusion of a cause of action, this Court in *Madanuri Sri Rama Chandra Murthy v. Syed Jalal* [*Madanuri Sri Rama Chandra Murthy v. Syed Jalal*, (2017) 13 SCC 174 : (2017) 5 SCC (Civ) 602] held that it should be nipped in the bud, so that bogus litigation will end at the earliest stage. The Court must be vigilant against any camouflage or suppression, and determine whether the litigation is utterly vexatious, and an abuse of the process of the court.”

In **Raghwendra Sharan Singh (supra)** the Supreme Court observed as under:

“7. Applying the law laid down by this Court in the aforesaid decisions on exercise of powers under Order 7 Rule 11 CPC to the facts of the case in hand and the averments in the plaint, we are of the opinion that both the courts below have materially erred in not rejecting the plaint in exercise of powers under Order 7 Rule 11 CPC. It is required to be noted that it is not in dispute that the gift deed was executed by the original plaintiff himself along with his brother. The deed of gift was a registered gift deed. The execution of the gift deed is not disputed by the plaintiff. It is the case of the plaintiff that the gift deed was a showy deed of gift and therefore the same is not binding on him. However, it is required to be noted that for approximately 22 years, neither the plaintiff nor his brother (who died on 15-12-2002) claimed at any point of time that the gift deed was showy deed of gift. One of the executants of the gift deed, brother of the plaintiff during his lifetime never claimed that the gift deed was a showy deed of gift. It was the appellant herein-original defendant who filed the suit in the year 2001 for partition and the said suit was filed against his brothers to which the plaintiff

was joined as Defendant 10. It appears that the summon of the suit filed by the defendant being TS (Partition) Suit No. 203 of 2001 was served upon Defendant 10-plaintiff herein in the year 2001 itself. Despite the same, he instituted the present suit in the year 2003. Even from the averments in the plaint, it appears that during these 22 years i.e. the period from 1981 till 2001/2003, the suit property was mortgaged by the appellant herein-original defendant and the mortgage deed was executed by the defendant. Therefore, considering the averments in the plaint and the bundle of facts stated in the plaint, we are of the opinion that by clever drafting the plaintiff has tried to bring the suit within the period of limitation which, otherwise, is barred by law of limitation. Therefore, considering the decisions of this Court in *T. Arivandandam* [*T. Arivandandam v. T.V. Satyapal*, (1977) 4 SCC 467] and others, as stated above, and as the suit is clearly barred by law of limitation, the plaint is required to be rejected in exercise of powers under Order 7 Rule 11 CPC. ”

15. Conclusively, considering the arguments advanced by the learned counsel for the parties, the circumstances of the case as a whole, especially the averments made in the plaint and in the application filed by the petitioner/defendant under Order 7 Rule 11 CPC and taking note of the legal position as enunciated by the Courts in the cases referred herein above, this Court is also of the opinion that the land, which is in question, purchased by the sale deed in question in the name of the plaintiff by his father namely, Sitaram Mishra-defendant No.3 claiming himself to be the natural guardian because the plaintiff was a minor at the relevant point of time and immediately thereafter the said purchased part of the land was sold in favour of Smt. Richa Barsaiyya, present petitioner. The said sale deed is very specific and the sale was made jointly by Sitaram and plaintiff in which father of the plaintiff claimed himself to be the natural guardian of the plaintiff. The plaint itself makes

it clear that the land, which was purchased by the present petitioner from the father of the plaintiff in the year 2006, was adjoining to the land of the plaintiff. Nowhere it is stated that the defendant No. 3 and the plaintiff had no relation after execution of the sale deed on 28.09.2006 and as such it is something unacceptable that the plaintiff was not aware of the said sale even after attaining the age of majority in the year 2013, but in the plaint very cleverly the cause of action is shown to be accrued in the year 2020 when the plaintiff went to his land adjoining to the land in question for raising construction. The land got mutated in the name of defendant No. 1/present petitioner in the year 2006 itself. Thus, it is clear that a fictitious cause of action has been shown by the plaintiff so as to bring the suit within limitation and to bring it under Article 59 of the Limitation Act. It is a settled legal position that if clever drafting of the plaint creates illusion of a cause of action, it should be nipped in the bud, so that bogus litigation will end at the earliest stage. The Court must be vigilant against any camouflage or suppression and would not entertain such type of bogus litigation. Correspondingly, I find that it is a vexatious litigation filed by the plaintiff with an intention to get his land returned only on the ground that his father did not get any permission and he was never declared to be his guardian to sale his land. However, from the averments made in the plaint and the documents available on record it is clear that the land was purchased in the name of the plaintiff by the father claiming himself to be the natural guardian of the plaintiff and sold the said land in favour of defendant No. 1, present petitioner. As such after lapse of such a long time, the suit for seeking declaration that the said sale deed be declared void cannot be entertained because it is admittedly barred by time and accordingly the plaint is liable to be rejected. In this view of the matter, it is held that the suit

filed by the plaintiff governs with Article 60 of the Limitation Act and the court below committed error in not deciding the application saying that the same can be decided only after recording the evidence.

16. Resultantly, this **petition is allowed**. The order dated 05.11.2022 passed by the trial court in RCS-A/74/2020 is hereby set aside. The application filed by the petitioner/defendant under Order 7 Rule 11 CPC is accordingly allowed. Consequently, the plaint i.e. RCS-A/74/2020 filed by the plaintiff-respondent No.1-Shivam Mishra is hereby rejected as the same is barred by law of limitation.

(SANJAY DWIVEDI)
JUDGE