



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH, NAGPUR**

**SECOND APPEAL NO.319 OF 2001**

Gangaram, son of Barba Meshram,  
original Defendant, since deceased,  
represented by his legal representatives

- 1 Yuvraj, son of Gangaram Meshram,  
aged 43 years, resident of House  
No.600, behind Bishop Cotton School,  
Dharampeth, Nagpur.
- 2 Smt. Sujata Chokhandar, aged about 41  
years, resident of Munje Layout, Near  
Pandharabodi, Ambazari, Nagpur.
- 3 Ku. Kavita Gangaram Meshram,  
aged about 39 years, resident of House  
No.600, Dharampeth, Ambedkar  
Nagar, Nagpur.
- 4 Prithviraj, son of Gangaram Meshram,  
aged 36 years, resident of House  
No.600, Dharampeth, Ambedkar  
Nagar, Nagpur.

.... Appellants

V/s

- 1 Smt. Kamal, widow of Laxman  
Meshram, aged major, resident of 372,  
Gandhi Nagar, Nagpur.
- 2 Shri Hemant, son of late Laxman  
Meshram, aged major, resident of  
behind Bishop Cotton School,  
Dharampeth, Nagpur.

- 3 Shri Shailendra, son of late Laxman Meshram, aged major, resident of 372, Gandhinagar, Nagpur.
- 4 Shri Pravin, son of late Laxman Meshram, aged major, resident of 372, Gandhinagar, Nagpur.
- 5 Smt. Madhuri, wife of T.N. Shamkunwar, aged major, resident of Kukade Layout, Nagpur.
- 6 Smt. Namita , wife of Hemant Landge, aged about adult, resident of Mankapur, Nagpur.

Respondents 2 to 4 through their Power of Attorney – Smt. Kamal, widow of Laxman Meshram, the mother of respondents 2 to 6, resident of 372, Gandhinagar, Nagpur.

.... Respondents

Shri A.S. Jaiswal, Advocate for the Appellants.  
Shri R.S. Parsodkar, Advocate for the Respondents.

**CORAM : S.B. SHUKRE, J.**

**Reserved On : 20<sup>th</sup> DECEMBER, 2013**

**Pronounced On : 29<sup>th</sup> APRIL, 2014**

**JUDGMENT :**

This appeal is directed against the judgment and decree dated 5/05/2001 passed in Regular Civil Appeal No.887/2000 by Fifth Additional District Judge, Nagpur, thereby confirming the judgment and

decree passed on 2/08/2000 in Regular Civil Suit No.37/1994 by Fifth Joint Civil Judge, Junior Division, Nagpur.

2. The appellants are the original defendants and respondents are the original plaintiffs, who had brought a suit against the appellants claiming a decree for declaration and delivery of possession of the suit property.

3. One Laxman Meshram, the husband of respondent no.1 and father of respondents no.2 to 6 had purchased the house bearing no.600, ward no.71, Nagpur, more particularly, described in plaint para 1 by two registered sale deeds dated 30/11/1956 and 8/07/1957. After the purchase of the house, the old house standing in the plot was demolished and said Laxman constructed a new three storeyed house consisting of five blocks, sometime in the year 1975-76. Three blocks of this house are under occupation of the tenants, one block on first floor is occupied by respondent no.2 and one block consisting of three rooms is occupied by the appellants. It is this new house which is the subject matter of the dispute in the present case and is hereinafter called as the suit house.

4. It is the case of the respondents that said Laxman was associated with Gandhinagar Co-operative Housing Society Ltd., Nagpur

(hereinafter called as 'the Society') and for many years he held the post of President as well as Secretary of the Society. Laxman was in need of some money for the purposes of the suit house which he intended to mobilise by raising loan with the said Society. Laxman had a brother, Gangaram, of whom the appellants are the children being his sons and daughters. Since Laxman was not in a position to obtain loan from the said Society in his name, it was decided mutually between himself, said Gangaram and the Society that the loan would be obtained by Gangaram in his own name for the purposes of the suit house by mortgaging in favour of the Society the suit house. It was also agreed that in order to facilitate this transaction, Laxman would transfer the suit house by executing the sale deed in favour of the Society and the Society would then transfer by a registered deed the suit house to Gangaram and then Gangaram in turn would mortgage the suit house in favour of the Society, upon which the Society would advance loan of Rs.10,000/- to Gangaram. Accordingly, an agreement dated 29/10/1974 (Exhibit 59) was executed between Laxman, Gangaram and the Society.

5. It was the case of the respondents that this arrangement was made only to facilitate raising of loan by Laxman for the purposes of the suit house and it was also agreed that the loan would be repaid by Laxman

and, therefore, deed of conveyance of the suit house in favour of Gangaram and deed of mortgage in favour of the Society were not intended to be acted upon. According to the respondents they were only nominally executed.

6. In pursuance of the said arrangement, the respondents submit, the Society conveyed the suit house by registered sale deed dated 3/05/1975 in favour of Gangaram and, thereafter, loan of Rs.10,000/- was advanced to Gangaram which was actually obtained for Laxman and which was intended to be paid by Laxman. A mortgaged deed also came to be executed on 26/05/1975 by Gangaram in favour of the Society, as a security for repayment of the loan.

7. It was specifically agreed that the Society shall transfer the suit house in favour of Gangaram only after the registered sale deed was executed by Laxman in favour of the Society. However, no such registered sale deed was ever executed in favour of the Society and even then the Society transferred the suit house by executing a sale deed in favour of Gangaram. According to respondents, the Society never had any transferable and marketable title or interest in the suit house and therefore sale deed executed by the Society on 3/05/1975 was illegal,

void and without any authority. Moreover, the transaction was not intended to be acted upon.

8. The respondents further submitted that said Laxman was the owner of the suit house and he had inducted three tenants and also collected rents from the three tenants. He had also allowed Gangaram and his family to occupy three rooms block situated on second floor of the suit house without taking any rent from him and without making him pay any charges for occupation. It was also submitted by respondents that Gangaram never contributed anything towards purchase of the suit house or for its construction and he was allowed to occupy the said block only because he was brother of Laxman. It was further submitted by respondents that the suit house in Municipal records continued to be in the name of Laxman and after his death on 12/04/1989, the suit house devolved upon respondents by inheritance and they became owners of the suit house.

9. It was further submitted by the respondents that sometime in the year 1990, after the death of Laxman, Gangaram and his family started creating nuisance and claiming the ownership on the basis of sham and bogus sale deed and therefore respondents issued notice to the appellants

on 1/11/1990 calling upon them to vacate the said three rooms. The notice was not complied with. Therefore, the respondents filed a suit against the appellants claiming declaration that the sale deed dated 3/05/1975, was void, sham, bogus and without any authority, with a further declaration that the respondents were the owners of the suit house and also a decree of delivery of possession.

10. The suit was resisted by the appellants. Preliminary objection as regards bar of suit by limitation and for non-joinder of necessary parties was raised. It was denied that Laxman had purchased the suit house and, thereafter, in the year 1975-76, constructed a new house. It was denied that by agreement dated 29/10/1974, it was agreed that the suit house would be transferred to Gangaram through Society for the purpose of obtaining of loan of Rs.10,000/- in the name of Gangaram for the purposes of suit house. It was denied that accordingly loan was obtained and it was completely repaid by Laxman. It was submitted that Gangaram had purchased the suit house from his own funds from the Society by registered sale deed dated 3/05/1975, and the appellants being his children were the owners of the suit house. It was denied that respondents had become owners of the suit house. It was submitted that the appellants were the exclusive owners of the suit house which was

constructed by Gangaram after obtaining loan from the Society and it was secured by Gangaram by mortgaging suit house in favour of the Society. It was denied that the appellants were permissive occupiers of the suit house. It was submitted that in order to repay the loan, Gangaram had inducted three tenants in the suit house and had authorised Laxman to collect rent from them, so that loan could be paid from out of the funds generated from the rents. It was denied that sale deed dated 3/05/1975 was sham, bogus and without any authority and that the mortgage deed was not intended to be acted upon. It was denied that the appellants had created any nuisance by claiming the ownership of the suit house adversely to the title of the respondent. The notice was also replied as being illegal and issued with malafide intention. On these grounds, it was urged that the suit was liable to be dismissed.

11. The trial Court framed several issues and after considering the evidence available on record and hearing both sides decreed the suit in its entirety by judgment and decree dated 2/08/2000. The judgment and decree were challenged before the first appellate Court in Regular Civil Appeal No.887/2000. After hearing both sides, the first appellate Court dismissed the appeal by its judgment and decree dated 5/05/2001. The present appeal is preferred against these judgments and decrees.

12. I have heard Shri A.S. Jaiswal, learned Counsel for the appellants and Shri R.S. Parsodkar for respondents. With their assistance, I have carefully gone through the impugned judgments and decrees and also the paper book of the appeal.

13. The appeal came to be admitted by this Court on 18/12/2001 on four substantial questions of law, which are as follows:

(i) Whether the suit is bad in law for non-joinder of necessary parties?

(ii) Whether in the absence of Gandhinagar Co-operative Housing Society Limited, Nagpur, the alleged validity of the sale-deed executed by the said Gandhinagar Co-operative Housing Society Limited in favour of Gangaram could have been challenged and set aside?

(iii) Whether the suit was barred by limitation since the sale-deed dated 3/05/1975, remained unchallenged for a period more than eighteen years?

(iv) Whether the suit to challenge the alienation was maintainable beyond the period of three years from the date of execution of the sale-deed under Article 59 of the Indian Limitation Act?

14. The third and fourth substantial questions of law relating to bar of suit by limitation go to the root of the challenge made in the present appeal. These substantial questions of law, therefore, would have to be

dealt with first.

15. Shri Jaiswal, learned Counsel for the appellants has submitted that the suit as filed by the respondents was for declaration of their title by avoiding an instrument, which was a registered sale deed dated 3/05/1975 (Exhibit 55). He submits that since it was a registered document, there was a prima facie presumption of it being valid and, therefore, was required to be set aside by filing a civil suit. This being the position of law, he further submits, Article 59 of the Limitation Act, 1963 was attracted and it required that the present suit should have been filed by the respondents within a period of three years from the date on which they had notice of the registered instrument. He further submits that the instrument being a registered document, the knowledge of the respondent about its existence would be presumed to be from the date of its execution i.e. 3/05/1975, but the suit was filed on 14/12/1993, after more than 18 years from the date of knowledge and so he further submits, the suit was hopelessly time barred. In reliance, he has referred to me the following cases:

**(i) MD. Noorul Hoda V/s. Bibi Raifunnisa & Ors.**  
**reported in (1996) 7 SCC 767,**

**(ii) Abdul Rahim & Ors. V/s. Sk. Abdul Zabbar & Ors.**  
**reported in (2009) 6 SCC 160,**

**(iii) *Ramti Devi (Smt.) V/s. Union of India reported in (1995) 1 SCC 198,***

**(iv) *Prem Singh & Ors. V/s. Birbal & Ors. reported in (2006) 5 SCC 353.***

16. Learned Counsel for the respondents submits that the registered sale deed dated 3/05/1975 was void ab initio as it was neither intended to be acted upon nor had been executed by the Society upon its having clear, valid and marketable title to the property. Such an instrument, he further submits, being void ab initio and without any authority, need not be set aside or cancelled and a suit would be maintainable straight away for the relief of recovery of possession and this being the legal position, he further submits, there was no question of bar of suit by limitation by applying Article 59 of the Limitation Act. In support, he has placed reliance upon the following cases:

**(i) *Khata Chinna Eswarareddi & Ors. V/s. Kukkala Reddigari Venkatachelamma Reddi reported in AIR 1954 Madras 83,***

**(ii) *Sanjay Kaushish V/s. D.C. Kaushish & Ors. reported in AIR 1992 Delhi 118(1),***

**(iii) *U.P. State Sugar Corporation Ltd. V/s. Dy. Director of Consolidation & Ors. reported in (2000) 2 SCC 572,***

**(iv) *Rankanidhi Sahu V/s. Nandakishore Sahu reported in AIR 1990 Orissa 64,***

**(v) *Syed. Rasool & Ors. V/s. Mohammad Moulana***  
***reported in AIR 1977 Karnataka 173.***

17. In *MD. Noorul Hoda* (supra), the question involved was whether in a case where a person is claiming title through a party to the decree or instrument through himself not a party to the decree or instrument and is further seeking to avoid the decree or instrument by a specific declaration, Article 59 would get attracted or not. It was held by the Hon'ble Apex Court that when the plaintiff seeks to establish his title to the property which cannot be established without avoiding the decree or an instrument standing as an insurmountable obstacle in his way which otherwise binds him, though not a party, the plaintiff necessarily has to seek a declaration and have that decree, instrument or contract cancelled or set aside or rescinded. It is further held that when the plaintiff is seeking avoidance of such a instrument, by seeking a declaration to have the instrument cancelled or set aside, he must lay the suit within three years from the date when the facts entitling the plaintiff to have the instrument set aside first became known to him. Following observations of the Hon'ble Apex Court in paragraph 6 being relevant in this regard, are reproduced as under:

“6. .... When the plaintiff seeks to establish his title to the property which cannot be established without avoiding the decree or an instrument that stands as an

insurmountable obstacle in his way which otherwise binds him, though not a party, the plaintiff necessarily has to seek a declaration and have that decree, instrument or contract cancelled or set aside or rescinded. Section 31 of the Specific Relief Act, 1963 regulates suits for cancellation of an instrument which lays down that any person against whom a written instrument is void or voidable and who has a reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, can sue to have it adjudged void or voidable and the court may in its discretion so adjudge it and order it to be delivered or cancelled. It would thus be clear that the word 'person' in Section 31 of the Specific Relief Act is wide enough to encompass person seeking derivative title from his seller. It would therefore, be clear that if he seeks avoidance of the instrument, decree or contract and seeks a declaration to have the decrees set aside or cancelled he is necessarily bound to lay the suit within three years from the date when the facts entitling the plaintiff to have the decree set aside, first become known to him.”

18. Approving the above referred law, larger bench of the Hon'ble Apex Court in a subsequent case, *Abdul Rahim & Ors.* (supra) has held that a suit for cancellation of transaction, whether on the ground of being void or voidable, would be governed by Article 59 of the Limitation Act. Relevant observations of the Hon'ble Apex Court appearing in paragraph 28, page 170, are reproduced as under :

“28. A suit for cancellation of transaction whether on the ground of being void or voidable would be governed by Article 59 of the Limitation Act. The suit, therefore, should have been filed within a period of three years from the

date of knowledge of the fact that the transaction which according to the plaintiff was void or voidable had taken place. The suit having not been filed within a period of three years, the suit has rightly been held to be barred by limitation.”

19. In the case of *Ramti Devi (Smt.)* (supra), the question was whether the suit filed by the plaintiff for a declaration that she was the absolute owner and was in possession of the suit house by avoiding a registered sale deed dated 29/01/1949, was maintainable as being not barred by limitation as provided under Article 59, Limitation Act, 1963. An argument was advanced on behalf of the appellant-plaintiff that limitation did not begin to run as the document of sale deed was void, it having been executed to stifle the prosecution. It was also argued that since the appellant-plaintiff having remained in possession, the only declaration that could be sought and obtained was that she was the owner and that the document did not bind the appellant-plaintiff. The argument was not accepted by the Hon'ble Apex Court, holding that until the document was avoided or cancelled by proper declaration, a duly registered document remains valid and binds the parties and, therefore, the suit necessarily had to be laid within three years from the date when the cause of action arose.

20. In the case of *Prem Singh & Ors.* (supra), it has been held by

Hon'ble Apex Court that when a document is void ab initio, a decree for setting aside the same would not be necessary as the same is non est in the eye of law. It is further held that once, however, a suit is filed for cancellation of the transaction, it would be governed by Article 59 and even if Article 59 is not attracted, the residuary article would be. It is also held that Article 59 would apply where a document is prima facie valid and would not apply to only those instruments which are presumptively invalid.

21. In the cases of *Khata Chinna Eswarareddi & Ors.* (supra) and *Sanjay Kaushish* (supra), it is held that the well settled principle of law is that if a particular document or a decree is void, the person affected by the said document or decree can very well ignore the same and file a suit seeking substantive relief which may be available to him without seeking any declaration that the said decree or document is void.

22. In the case of *U.P. State Sugar Corporation Ltd.* (supra) also the Hon'ble Apex Court has held that a void document is liable to be ignored by the Courts. Same principle of law has been laid down in the cases of *Rankanidhi Sahu* (supra) and *Syed. Rasool & Ors.* (supra).

23. From the above referred cases, the legal position that emerges is that a document which is void ab initio need not be set aside by seeking a specific declaration to that effect and suit for substantive relief available to the plaintiff in the law can be filed by ignoring such document. However, if the document alleged to be void is a registered instrument, it is prima facie valid and, therefore, it would be necessary to have it set aside by seeking a specific declaration. Seeking of such a declaration is not necessary only if the instrument is presumptively invalid. In case of a document which is prima facie valid, Article 59 applies and the suit for its cancellation or declaration to be void must be filed within three years from the date of the knowledge of the plaintiff about existence of such an instrument. Once a suit is filed for cancellation of such an instrument, it would be governed by Article 59 and if it is not attracted specifically, the residuary article would be.

24. In the present suit, the sale deed dated 3/05/1975 (Exhibit 55) is a registered sale deed and the respondents had knowledge about it since the day of its execution. It is also their case that this sale deed, though executed by the Society by a registered instrument in favour of the father of the appellants, was not intended to be acted upon and was without any authority as well as sham and bogus. It is not the case of the respondents

that they acquired knowledge about the sale deed and its being void sometime later after its execution. Defendant no.1 has examined himself as defence witness no.1 (Exhibit 70). In his examination-in-chief, he has stated that at the time when the sale deed, vide Exhibit 55, was executed and registered in the office of the sub-registrar, he was present and so also deceased Laxman and respondent no.1. This has not been controverted in any manner by the respondents. Respondent no.1, examined herself as witness no.1 vide Exhibit 50. During her cross-examination by the appellants, she admitted that for the entire period between 1955 and 1974, she was throughout aware of the said sale deed vide Exhibit 55. She also admits that even during lifetime of her husband, Laxman, who died on 12/04/1989, Laxman did not take any exception to the said sale deed. These facts would show that even though the respondents had knowledge of the registered sale deed, since the day of its execution on 3/05/1975, neither Laxman nor respondents after death of Laxman, took any objection to the sale deed and filed a suit seeking a declaration that the same was void. They filed it only on 14/12/1993, after expiry of more than 18 years.

25. Now, the said instrument was a registered document and the law discussed earlier would indicate that it was a presumptively valid and

binding document. Therefore, it was required to be set aside by seeking a specific declaration and any such suit when filed, would attract Article 59. The present suit, being such a suit filed to avoid a registered instrument, attracted by Article 59 and, therefore, should have been filed by the respondents within a period of three years from the date of knowledge which is, 3/05/1975. The suit having been filed much after expiry of the limitation period of three years, I am of the view that the suit is barred by limitation. Such a suit is not maintainable at law.

26. Learned Civil Judge, it is seen from the decree of the trial Court, has wrongly held that the suit being based upon the mortgage, limitation period of 30 years was applicable and, as such, the suit was not barred by limitation. The suit, was never based upon mortgage and was not for redemption of the mortgaged property and, therefore, there was no question of application of Article 61(a), Limitation Act to the present suit.

27. Equally, the learned District Judge in holding that the suit was within limitation because Article 59 of the Limitation Act did not apply to it, the sale deed vide Exhibit 55 being void ab initio and illegal since inception, has ignored what lay at the root of the document stated to be void ab initio. The document in question is a registered instrument with

prima facie validity attached to it and, therefore, it is required to be set aside by seeking a specific declaration from the Civil Court. This is the ratio of the case of *Abdul Rahim & Ors.* (supra), *MD. Noorul Hoda* (supra) and *Prem Singh & Ors.* (supra). There is no proposition of law shown to me which states that a registered instrument which is prima facie valid, need not be set aside by seeking a declaration to that effect in a civil suit.

28. The findings, therefore, recorded by both the Courts below concurrently that the suit is within limitation, though for different reasons, are not in consonance with the well established principles of law and are required to be quashed and set aside.

29. In view of the above, I find that the suit as filed by the respondents seeking declaration that the sale deed dated 3/05/1975 (Exhibit 55) is void, sham, bogus and without any authority, is governed by Article 59 of the Limitation Act and it having been filed much after a period of three years from the date of knowledge of the sale deed i.e. 3/05/1975, as prescribed under Article 59, it is barred by limitation. It is not maintainable. The third and fourth substantial questions of law are answered accordingly.

30. The first and second substantial questions of law are on the points of the suit being bad in law for non-joinder of necessary parties i.e. Gandhinagar Co-operative Housing Society Ltd., Nagpur, without which the validity of the sale deed dated 3/05/1975, could not have been challenged.

31. Learned Counsel for the appellants has submitted that since it has been alleged by the respondents that the Society did not have any clear valid and marketable title to convey the suit house by registered instrument to Gangaram, the father of the appellants, and that sale deed was void and was not intended to be acted upon, the Society was a necessary party without whom the suit for such a declaratory relief could not have been decreed.

32. Learned Counsel for the respondents submits that once the title is conveyed by a registered instrument, the vendor does not have any role to play and anybody who questions the title of the vendee does not have to implead the vendor as the dispute about title remains a dispute between that person and the vendee. He also submits that a person is a necessary party only when he is affected by the result of the suit and in this case the

result of the suit one way or the other would not affect the Society in any way and, therefore, the Society is not a necessary party to the suit. In support, he has placed reliance upon the cases of:

- (i) Jaikaran Singh V/s. Sita Ram Agarwalla & Ors. reported in AIR 1974 Patna 364,**
- (ii) Laxmanlal Jee Mandir V/s. Laxmiram Agarwalla & Anr. reported in AIR 1998 Gauhati 89.**

33. As rightly submitted on behalf of the respondents, the test for determining whether a person is a necessary party or not lies in examining the question as to whether a person would be affected by the result of the suit, if not joined as a party and if answer is in the affirmative, such person would be a necessary party to the suit. This is the principle that broadly emerges from the above cases. In the instant case, the objection as regards non-joinder of necessary parties has been taken by the appellants in their written statement itself and the issue was also framed. It was answered in the negative against the appellants by the trial Court, while the appellate Court does not seem to have dealt with it. Now, it would be necessary for this Court to deal with this issue. Of course, after having held that the suit is barred by limitation, any answer to the issue would only be academic. But, as the issue has been raised, it would have to be addressed by this Court.

34. The suit as filed by the respondents was for, inter alia, a declaration that the registered sale deed was void, sham, bogus and without any authority. It was alleged by the respondents that the conveyance of the suit house was to be made by the Society in favour of Gangaram only after the original owner Laxman executed a registered sale deed in favour of the Society. It was also the contention of the respondents that this sale deed was never intended to be acted upon and its limited purpose was only to obtain loan of Rs.10,000/- from the society. It was also the case of the respondents that even though no registered sale deed was executed by Laxman in favour of the Society, the Society went ahead in transferring the suit house to Gangaram by executing a registered sale deed dated 3/05/1975 and this sale deed having been executed without any valid and marketable title of the Society to the suit house, it was a void document. This basis of the suit made the Society a necessary party as in the absence of the Society, no findings on these contentions could have been recorded. Further, as there was a challenge to the title of the Society itself in respect of the suit house, no declaration that the sale deed dated 3/05/1975 was void could have been made by the Civil Court and, any such declaration if made, would have affected the Society. Therefore, I find no substance in the argument of learned Counsel for the

respondents and find merit in the argument of learned Counsel for the appellants in this regard. Accordingly, I hold that the Society was a necessary party and in its absence the suit was bad in law. The first and second substantial questions of law are answered accordingly.

35. Learned Counsel for the respondents has submitted that in the previous suit filed by the appellants against the respondent no.2 for recovery of possession, reliance upon reply given by respondent no.2 to the notice issued to him by the appellants in the year 1990 has been placed. In this reply, he further submits, respondent no.2 has set up a hostile title to the suit house as against the appellants alleging that he became the owner of the suit house after termination of the tenancy in the year 1990 and, therefore, Article 67 prescribing period of 12 years of limitation would be applicable to the instant case. There is no such defence taken in the present suit nor any issue has been framed on this plea. There have been no pleadings and no evidence led by either of the parties on this aspect of the matter. Therefore, this argument deserves to be rejected and it is rejected accordingly.

36. For the reasons stated above, I find that there is merit in this appeal and it deserves to be allowed by holding that the suit as filed by the

respondents being barred by limitation and being without joinder of a necessary party is not maintainable at law and is liable to be dismissed.

37. There is a civil application being Civil Application No.507/2011 filed for grant of permission to produce on record additional evidence as per the list annexed to the application, which application has been strongly opposed by the respondents. However, as the appeal is being allowed and the suit itself is being dismissed, this application has been rendered infructuous and, accordingly, it is disposed of as infructuous.

38. Learned Counsel for the appellants and respondents have also referred to me some more cases on the point of jurisdiction, relinquishment deed and adverse possession. These are as follows:

**(i) Harshad Chiman Lal Modi V/s. D.L.F. Universal Ltd. & Anr. reported in AIR 2005 SC 4446 (1),**

**(ii) North Eastern Railway Administration, Gorakhpur V/s. Bhagwan Das (dead) by LR's reported in (2008) 8 SCC 511,**

**(iii) Sri Chand & Anr. V/s. Om Praksh & Ors. reported in AIR 1977 SC 1823,**

**(iv) Jaikaran Singh V/s. Sita Ram Agarwalla & Ors. reported in AIR 1974 Patna 364.**

**(v) Arjun Singh V/s Kartar Singh & Ors. reported in AIR 1951 SC 193,**

**(vi) *Doraiswami V/s. Rathnammal & Ors. reported in AIR 1978 Madras 78,***

**(vii) *Jagdish V/s. Rajendra reported in AIR 1975 Allahabad 395 (1),***

**(viii) *Namdeo Karbhari Bodake & Ors. V/s. Chababu @ Chahadu Rangnath Bhise & Ors. reported in 2006 (1) Mh.L.J. 878,***

**(ix) *Subhashappa V/s. Maroti Laxmanrao Sawarkar reported in 2006 (3) Mh.L.J. 318,***

**(x) *State of Karnataka & Ors. V/s. K.V. Khader reported in 1990 (2) SCC 271.***

I do not propose to consider them as they are no longer required to be in view of the conclusions reached earlier.

39. Learned Counsel for the respondents has also referred to me the case of *Navaneethammal V/s. Arjuna Chetty* reported in *AIR 1996 SC 3521* to support his argument that the High Court should avoid interference with the concurrent findings of the Courts below under Section 100, Civil Procedure Code, unless warranted for some exceptional reasons and in any case, the High Court is not expected to re-appreciate the evidence just to replace the findings of the lower Courts. It would be clear from the reasons recorded earlier, this Court has not re-appreciated the evidence and has considered the pure questions of law,

which were substantial in nature and which arose due to ignoring of the well settled principles of law. Thus, bearing in mind the law so laid down in the said case of *Navaneethammal* (supra) only, that I have reached my above conclusions.

40. In the result, the appeal deserves to be allowed. The appeal stands allowed and the impugned judgments and decrees are quashed and set aside. The suit of the respondents stands dismissed. However, in the circumstances of the case, parties shall bear their own costs. Decree be drawn up accordingly.

**S.B. SHUKRE, J.**

NH/-

41. At the request of the learned Counsel for the respondents, the effect and operation of the judgment is stayed for ten weeks from the date of the order to enable the respondents to take steps for challenging the judgment, in case they wish to do so.

**S.B. SHUKRE, J.**

NH/-