

SMT. RAMTI DEVI

v.

UNION OF INDIA

OCTOBER 20, 1994

[K. RAMASWAMY, S.P. BHARUCHA AND
M.K. MUKHERJEE, JJ.]

Limitation Act, 1963—Article 59 of Schedule—Suit for declaration—Sale deed duly executed being registered document—Plaintiff seeking to have sale—Deed avoided or cancelled—Limitation begins to run from the date on which sale deed was executed and registered.

The plaintiff filed the suit for declaration that she was the absolute owner and was in possession of the house. She claimed to have purchased the property under a registered sale deed, and that 'R' had no right, title or interest to alienate the property by the sale deed dated January 29, 1947 which was said to have been executed to stifle the prosecution intended to be lodged against him. The trial Court dismissed the suit. On appeal, the High Court confirmed it. This appeal by special leave has been filed against the judgment of the High Court.

In this appeal, the question that arose is whether the suit was filed within limitation. It was admitted that the plaintiff had knowledge of the execution and registration of the sale deed on Jan. 29, 1947. The present suit was filed on July 30, 1966. The appellant contended that Article 113 of the Limitation Act, 1963, is the relevant Article and the limitation does not begin to run as the sale deed document is void, it being executed to stifle the prosecution, and that since the appellant having been remained in possession, the only declaration that could be sought and obtained was that she was the owner and that the document does not bind the appellant.

Dismissing the appeal, this Court

HELD : The recitals of the documents would show that the sale deed was executed for valuable consideration to discharge pre-existing debts and it is a registered document. Apart from the prohibition under Section 92 of the Evidence Act to adduce oral evidence to contradict the terms of the recital therein, no issue in this behalf on the voidity of the sale deed

- A or its binding nature was raised nor a finding recorded that the sale deed is void under Section 23 of the Contract Act. Pleading itself is not sufficient. Since the appellant is seeking to have the document avoided or cancelled, necessarily a declaration has to be given by the Court in that behalf. Until the document is avoided or cancelled by proper declaration, the duly registered document remains valid and binds the parties. So the
- B suit necessarily has to be laid within three years from the date when the cause of action arose. Since the cause of action had arisen on Jan. 29, 1947, the date on which the sale deed was executed and the registered and the suit was filed on July 30, 1966, the suit is barred by limitation. [695-D-F]

- C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 522 of 1979.

From the Judgment and Order dated 22.2.78 of the Delhi High Court in R.F.A. No. 59 of 1978.

- D V.M. Tarkunde and M.V. Goswami for the Appellant.

J.D. Jain, Mrs. Indra Sawhney, Mrs. Sushma Suri, (N.P.) and Ms. A. Subhashini for the Respondent.

The following Order of the Court was delivered:

- E This appeal by special leave arises against the judgment and decree of the Delhi High Court in R.F.A. No. 59 of 1978 dated February 26, 1979. The plaintiff-appellant filed the suit for declaration that she is the absolute owner and is in possession of the house bearing old Municipal No. 5925 and new Municipal No. 4477, Ward No. XI, situated at plot No. 7/18, Darya
- F Ganj, Delhi. She claimed to have purchased the property from one Kaushalya Devi under a sale deed dated May 11, 1946 registered on May 29, 1946 and thereby she is said to be the owner. Shri Ratti Ram had no right title or interest to alienate the property by the sale deed dated January 29, 1947 which was said to have been executed to stifle the prosecution intended to be lodged against him. The trial court dismissed the suit. On
- G appeal, the High Court confirmed it.

- H The question is whether the suit is within limitation. In the evidence, it was admitted that she had knowledge of the execution and registration of the sale-deed on January 29, 1947. Initially a suit was filed in 1959 but was dismissed as withdrawn with liberty to file fresh suit. Admittedly, the

present suit was filed on July 30, 1966. The question, therefore, is whether the suit is within limitation. Article 59 of the schedule to the Limitation Act, 1963, relied on by the appellant herself, postulates that to cancel or set aside an instrument or decree or for the rescission of a contract, the limitation is three years and it begins to run when the plaintiff entitles to have the instrument or the decree cancelled or set aside or the contract rescinded first become known to him. As seen, when the appellant had knowledge of it on January 29, 1949 itself the limitation began to run from the date and the three years limitation has hopelessly been barred on the date when the suit was filed. It is contended by Shri V.M. Tarkunde, learned senior counsel for the appellant, that the counsel in the trial court was not right in relying upon Article 59. Article 113 is the relevant Article. The limitation does not begin to run as the sale-deed document is void as it was executed to stifle the prosecution. Since the appellant having been remained in possession, the only declaration that could be sought and obtained is that she is the owner and that the document does not bind the appellant. We are afraid that we cannot agree with the learned counsel. As seen, the recitals of the documents would show that the sale deed was executed for valuable consideration to discharge pre-existing debts and it is a registered document. Apart from the prohibition under s.92 of the Evidence Act to adduce oral evidence to contradict the terms of the recital therein, no issue in this behalf on the voidity of the sale-deed or its binding nature was raised nor a finding recorded that the sale-deed is void under s.23 of the Contract Act. Pleading itself is not sufficient. Since the appellant is seeking to have the document avoided or cancelled, necessarily a declaration has to be given by the court in that behalf. Until the document is avoided or cancelled by proper declaration, the duly registered document remains valid and binds the parties. So the suit necessarily has to be laid within three years from the date when the cause of action had occurred. Since the cause of action had arisen on January 29, 1947 the date on which the sale-deed was executed and registered and the suit was filed on July 30, 1966, the suit is hopelessly barred by limitation. The courts below, therefore, were right in dismissing the suit. The appeal is accordingly dismissed with costs.

A.G.

Appeal dismissed.