

Gopalakrishnan Vs. Srinivasan

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Court : Kerala

Decided On : Mar-01-2010

Reported in : 2010(2)KLT216

Judge : Thomas P. Joseph, J.

Acts : [Registration Act, 1908](#) - Sections 17(1), 17(2), 18, 28, 64, 65 and 71;
;Limitation Act - Schedule - Articles 59 and 65; ;Code of Civil Procedure (CPC) -
Order 6, Rule 4

Appeal No. : S.A. No. 758 of 1996

Appellant : Gopalakrishnan

Respondent : Srinivasan

Advocate for Def. : A.P. Chandrasekharan, Sr. Adv. and; Prabha R. Menon, Adv.

Advocate for Pet/Ap. : K.G. Gouri Sankar Rai, Adv.

Disposition : Appeal allowed

Judgement :

Thomas P. Joseph, J.

1. The suit property originally belonged to the late Appanna, father of respondent/ plaintiff as per order in O.A. No. 5670 of 1975. That property is situate in Muliya

Village within the local limits of the Sub Registrar, Kasargod. Respondent claimed that on the death of his parents the said property devolved on him and he has been possessing it. Appellant No. 1 is brother of the late Appanna. In the year 1988 appellant No. 1 and others on the strength of a sale deed allegedly executed by the late Appanna trespassed into the suit property. On enquiry respondent learnt that appellant No. 1 had got executed Ext.B2, assignment deed No. 1014 of 1978 dated 13.10.1978 by the late Appanna in respect of the suit property by undue influence and fraud. Respondent filed O.S. No. 352 of 1990 in the court of learned Munsiff seeking cancellation of Ext.B2, assignment deed and recovery of possession of the suit property. Respondent alleged that the late Appanna was suffering from old age infirmities since six years prior to his death (on 27.11.1983) and for about ten years he was under the control and undue influence of appellant No. 1. The late Appanna died under suspicious circumstances at the house of appellant No. 1. The suit property though situate within the local limits of the Sub Registrar (for short, 'the SRO'), Kasargod and hence the document could have been registered only in that SRO, it was actually registered at SRO, Badiadka which had no jurisdiction to receive or register the said document. To facilitate registration of the document at SRO, Badiadka an item of property not belonging to the late Appanna and situate within the local limits of that SRO was included in the assignment deed. The said document is brought about by the scribe, attesters, witnesses, the Sub Registrar and Ramachandra, brother of appellant No. 1 without the knowledge of the late Appanna. Appanna had no information about the assignment deed as his possession of the suit property was not disturbed. Respondent claimed that he learnt about fraud and undue influence only on 06.09.1988. Appellant No. 1/defendant No. 1 contended that the late Appanna sold the suit property (situated within the local limits of SRO, Kasargod) and another item of land (situated within the local limits of SRO, Badiadka) to him for consideration as per Ext.B2, assignment deed and since then he was in possession and enjoyment of the said properties. He denied the allegation of fraud and undue influence in the execution and registration of the assignment deed. It is not correct to say that the late Appanna was suffering from old age infirmities during the relevant time. It is also not correct to say that item No. 1 of Ext.B2, assignment deed did not belong to the late Appanna. Appellant No. 1 assigned the

suit property to appellant Nos. 2 and 3/additional defendant Nos. 2 and 3 as per Exts.B3 and B4, assignment deeds dated 17.06.1980 and 06.08.1981, respectively and since then they are in possession of the suit property. Respondent was aware of Ext.B2, assignment deed from the date of that document itself. Hence the suit is barred by limitation. Appellant Nos. 2 and 3, impleaded on the contention raised by appellant No. 1, raised similar contentions. Learned Munsiff dismissed the suit holding that respondent did not plead particulars or prove the alleged undue influence and fraud in the execution and registration of Ext.B2, assignment deed. Respondent could not prove that item No. 1 of Ext.B2, assignment deed (situate within the local limits of SRO, Badiadka) did not belong to the late Appanna so that it could be said that the document could not have been registered at that SRO. Affirming Ext.B2, assignment deed learned Munsiff held that the suit filed in the year 1990 is barred by limitation as evidence revealed that respondent had knowledge about execution and registration of that assignment deed at least by 10.11.1980. In appeal at the instance of the respondent learned Sub Judge held that though the allegation of fraud and undue influence (in the matter of execution of Ext.B2, assignment deed) is not proved, fraud was played on the law of registration by getting the document registered at SRO, Badiadka which had no jurisdiction to receive or register the document and hence the assignment deed is invalid. So far as limitation is concerned learned Sub Judge took the view that though the suit is not brought within three years of the day respondent got knowledge about the assignment deed as the suit is brought within 12 years of the impugned assignment deed, it is within time. Respondent was given a decree as prayed for. Hence this Second Appeal at the instance of appellants (defendant Nos. 1 to 3).

2. The following substantial questions of law are framed for a decision.

(i) Has not the first appellate court gone wrong in holding that registration of Ext.B2, assignment deed at SRO, Badiadka amounted to fraud on the law of registration? Has not the first appellate court gone wrong in its interpretation of Section 28 of the Indian Registration Act (for short, 'the Act')?

(ii) Whether a party to the fraudulent execution of a document could seek to set aside that document on the ground of such fraud?

(iii) When a document is only voidable and recovery of possession of immovable property is sought for after setting aside the document, is it not Article 59 of the Limitation Act that governed the suit?

Shri K.G. Gouri Sankar Rai, learned Counsel for the appellants contend that the first appellate court has gone wrong in its findings. According to the learned Counsel, respondent was not able to prove that item No. 1 in the impugned assignment deed (Ext.B2) did not belong to the late Appanna and that registration of the document at SRO, Badiadka is a fraud on the law of registration. Further contention is that there is no proper plea or evidence of alleged undue influence and fraud in getting the documents executed or registered at SRO, Badiadka. At any rate as the late Appanna himself was a party to the alleged fraud in getting the document registered at SRO, Badiadka, himself or his legal representatives could not assail the document on that ground and recover possession of the property. It is contended that as the document at any rate is only voidable respondent could not recover possession of the property without setting aside the document, Article 59 of the Limitation Act applied and as evidence reveals at least by 10.11.1980 respondent had knowledge about execution and registration of Ext.B2, assignment deed. Hence the suit brought after three years of that day is barred by limitation. Learned Counsel has placed reliance on the decision in Venkataswami v. Venkatasubbayya : AIR 1932 Mad. 311 and Muhammed Abdul Razack v. Syed Meera Ummal : AIR 1967 Mad. 212. Shri T. Sethumadhavan learned Counsel for respondent contended that there is sufficient particulars of fraud and undue influence pleaded by the respondent. It is contended that the document was registered at SRO, Badiadka in a deceitful manner though the suit property is situated within the local limits of SRO, Kasargod. According to the learned Counsel Trial Court went wrong in holding that burden lay on the respondent to prove that item No. 1 in the impugned assignment deed (situate within the local limits of SRO, Badiadka) did not belong to the late Appanna. Learned Counsel has placed reliance on the decisions in Mathura Prashad v. Chandra Narayan Chowdhury AIR 1921 PC 8, Collector of Gorakpur v. Ram Sundar Mal and Ors. :

AIR 1934 PC 157 and Mohammad Khaja v. Monappa AIR 1953 Hyd. 280.

3. Ext. B2 is the assignment deed No. 1014 of 1978 dated 13.10.1978 which is called in question in this proceeding. It is not disputed that the said assignment deed is executed by the late Appanna in respect of the suit property and another item of property (item No. 1 in that document). It is also not disputed that the suit property is situate within the local limits of SRO, Kasargod while item No. 1 in the said assignment deed is situate within the local limits of SRO, Badiadka. Admittedly Ext.B2 has been registered at SRO, Badiadka. Case is that to facilitate registration of Ext.B2, assignment deed at SRO, Badiadka item No. 1 (in that document) situated within the local limits of that SRO though did not belong to the late Appanna was fraudulently included in the document and it was got registered at SRO, Badiadka by playing fraud in the law of registration.

4. Fraud no doubt, vitiates any transaction. Sir Frederick Pollock in 'The Law of Fraud, Misrepresentation and Mistake in British India' states at page 17,

Fraud may be described, for most usual purposes, as the procuring of advantage to oneself, or furthering some purpose of one's own, by causing a person with whom one deals to act upon a false belief.

Sir Frederick Pollock would say that the above is not a definition and that there may be 'fraud' without any seeking of personal advantage. According to Fawcett, J. (Raneegunge Coal Association v. Tata Iron and Steel Co. Ltd. AIR 1929 Bom. 119) a necessary element in ordinary fraud is deception or deceit and getting somebody to believe something that is not really correct. In Tomlin's Law Dictionary, 'fraud' is defined as deceit in grants and conveyances of lands, and bargaining and sales of goods, etc., to the damage of another person which may be either by suppression of the truth, or suggestion of a falsehood. 'Fraud' means and includes any of the following acts committed by a party to a contract, or within his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:

i) the suggestion, as to a fact, of that which is not true by one who does not believe it to be true.

- ii) the active concealment of a fact by one having knowledge or belief of the fact;
- iii) a promise made without any intention of performing it.
- iv) any such act or omission as the law specifically declares to be fraudulent. (See P. Ramanatha Iyer, *The Law Lexicon*, Second Edition, Page 757).

5. 'Undue influence' is the unfair persuasion of a party who is under the domination of the person expressing the persuasion or who, by virtue of the relation between them is justified in assuming that the person will not act in a manner inconsistent with his welfare. A person who has been induced to enter into a transaction by the undue influence of another (the wrongdoer) is entitled to set the transaction aside as against the wrongdoer. Such undue influence is either actual or presumed. In *Bank of Credit and Commerce International SA v. Abouy* (1992) 4 All E.R. 955 : (1990) 1 QB 923 the Court of appeal has adopted the following classification (regarding cases of undue influence).

Class 1: Actual undue influence. In these cases it is necessary for the claimant to prove affirmatively that the wrongdoer exerted undue influence on the complainant to enter into the particular transaction which is impugned.

Class 2: Presumed undue influence. In these cases the complainant only has to show, in the first instance, that there was a relationship of trust and confidence between the complainant and the wrongdoer of such a nature that it is fair to presume that the wrongdoer abused that relationship in procuring the complainant to enter into the impugned transaction. In Class 2 cases therefore there is no need to produce evidence that actual undue influence was exerted in relation to the particular transaction impugned: once a confidential relationship has been proved, the burden then shifts to the wrongdoer to prove that the complainant entered into the impugned transaction freely, for example by showing that the complainant had independent advice. Such a confidential relationship can be established in two ways, viz:

Class 2A. Certain relationships (for example solicitor and client, medical advisor and patient) as a matter of law raise the presumption that undue influence has

been exercised.

Class 2B. Even if there is no relationship falling within class 2A, if the complainant proves the de factor existence of a relationship under which the complainant generally reposed trust and confidence in the wrongdoer, the existence of such relationship raises the presumption of undue influence. In a class 2B case therefore, in the absence of evidence disproving undue influence, the complainant will succeed in setting aside the impugned transaction merely by proof that the complainant reposed trust and confidence in the wrongdoer without having to prove that the wrongdoer exerted actual undue influence or otherwise abused such trust and confidence in relation to the particular transaction impugned.

6. Order VI Rule 4 of the Code of Civil Procedure (for short, 'the Code') requires a party relying on fraud, undue influence, etc., to give particulars of such fraud, undue influence, etc. But the plaint does not give particulars of the alleged fraud and undue influence in the matter of execution of the impugned assignment deed. When examined as P.W.1, respondent also did not conceal his lack of information about particulars of the fraud and undue influence. It is trite law that to set aside a transaction as vitiated by fraud a high degree of evidence is required. Lord Atkin has said in *A.L.N. Narayanan Chettyar and Anr. v. Official Assignee, High Court of Rangoon and Anr.* (28) : AIR 1941 PC 93 that fraud like any other charge of criminal offence whether made in civil or criminal proceedings must be established beyond reasonable doubt and that a finding as to fraud cannot be based on suspicion and conjecture. Halsbury's Laws of England, 4th Edn. (Vol.31) at Page 518 states that when there is no relationship shown to exist from which undue influence could be presumed, the onus is on the person seeking to set aside the transaction to prove affirmatively that that the wrongdoer exerted undue influence on the complainant to enter into the impugned transaction. Respondent has not discharged that onus. There is no evidence to show that appellant No. 1 caused the late Appanna to act upon any false belief either for procuring any advantage for himself or furthering some purpose of his own, or, without seeking any personal advantage for himself. There is also no evidence to show that the late Appanna was under undue influence falling under any of the classes enumerated in *Bank of Credit and Commerce International's* case (supra). Learned Munsiff found that

there is neither proper plea nor reliable or sufficient evidence of the alleged fraud or undue influence in the matter of execution of the assignment deed. On the other hand there is sufficient evidence to show that the late Appanna and even the respondent accepted and acknowledged Ext.B2, assignment deed as seen from Ext.B1, assignment deed dated 10.11.1980 executed by the late Appanna in favour of one C.H. Ahammad and attested by the respondent that eastern boundary of item No. 1 in that document is described as property in the possession of appellant Nos. 1 and 2 (i.e., the suit property) assigned to appellant No. 1 as per Ext.B2, assignment deed and a portion of which appellant No. 1 has assigned to appellant No. 2 as per Ext.B 3 and that in Ext.B3, assignment deed dated 17.6.1980 executed by appellant No. 1 in favour of appellant No. 2 in respect of half of the suit property, the late Appanna is an attesting witness along with his own brother, Ramachandra. As P.W.1, respondent No. 1 has admitted that he got Ext.B 1 read over before attesting it and that the contents of Ext.B1 are correct. The first appellate court also, though without much discussion of the matter has concurred with the view of the learned Munsiff about lack of pleadings and evidence regarding the alleged fraud and undue influence in the execution of Ext.B2, assignment deed.

7. Then, was there any fraud played on the law of registration by getting Ext.B2, assignment deed registered at SRO, Badiadka as claimed by the respondent and found in favour by the first appellate court? It is not disputed before me that the suit property (item No. 2 in Ext.B2, assignment deed) is situate within the local limits of SRO, Kasargod while item No. 1 of that document is situate within the local limits of SRO, Badiadka where the document was registered. According to the respondent, item No. 1 property in Ext.B2 belonged to one Sarojini Amma as revealed from Ext.A5, copy of Patta and it was fraudulently included in the document to facilitate its registration at SRO, Badiadka. That according to the respondent was on account of fraud played by appellant No. 1, the witnesses and attesters in the document, the Sub Registrar concerned and Ramachandra, (brother of appellant No. 1 and the late Appanna). Now two questions arise for a decision: whether registration of Ext.B2 at SRO, Badiadka amounted to fraud on law of registration, secondly; assuming that the document is got registered fraudulently at SRO, Badiadka is it open to the respondent to challenge the

document on that ground and recover possession of the suit property?

8. The first appellate court took the view that no portion of the suit property fell within the local limits of SRO, Badiadka and hence the Sub Registrar of that Sub District had no jurisdiction to receive or register the document concerning the suit property. According to the first appellate court though there is no evidence of collusion (in obtaining registration at SRO, Badiadka) as registration is obtained from the Sub Registrar who had no jurisdiction to do so, it amounted to legal fraud (fraud on law of registration) which vitiated the assignment deed and hence it is void.

9. I am afraid the first appellate court has not correctly understood Section 28 of the Act. As per that provision except as otherwise provided in Part V of that Act every (non-testamentary) document mentioned in Section 17 Sub-section (1) Clauses (a) to (c) and Sub-section (2) in so far as such document affects immovable property and Section 18(a), (b), (c) and (cc) shall be presented for registration in the office of the Sub Registrar within whose Sub District the whole or some portion of the property to which such document relates is situate. The provision is clear and specific that if the document relates to properties situated in different sub districts the document could be registered by the Sub Registrar of any of those Sub Districts, no matter whether the extent of the property situated in that Sub District is more or less. Existence of 'some portion of the property' in the Sub District is sufficient to confer jurisdiction on the Sub Registrar of that Sub District provided, there was an intention to transfer such land. As long as the law permits registration of a document at a place where some portion of the land covered by the deed of transfer is situate, parties can take advantage of that and get the document registered at a place where a small portion of the land intended to be transferred is situate. This view gets support from *Julumdhari Rai and Ors. v. Debi Rai and Ors.* : AIR 1965 Patna 279. The scheme of the Act is also that. When a Sub Registrar registers a non-testamentary document relating to immovable property not wholly situate in his own Sub District, he has to make a memorandum thereof and of the endorsement and certificate (if any) thereon and send the same to every other Sub Registrar in whose sub district also any part of such property is situate. Then the latter is to file the memorandum in his Book No. 1 (See Section

64 of the Act). The procedure to be followed where the document relates to land in several Districts is provided in Section 65 of the Act. But what happens if a non-testamentary document is presented for registration before a Sub Registrar within whose Sub District no portion of the property intended to be transferred is situate and hence he had no authority to register the same under Section 28 of the Act. A reading of Section 71 of the Act indicates that in such a situation, the Sub Registrar concerned could refuse to register the document. As per Section 71 bar of registration by another registering authority arises only when a Sub Registrar refuses to register a document on grounds other than that property to which the document relates is not situate within his Sub District and an endorsement is made on the document that registration is 'refused'. The Act thus does not bar the document which is not registered by a Sub Registrar as the property to which the document relates or some portion of it is not situate within his Sub District being presented for registration before the Sub Registrar who has otherwise jurisdiction under Section 28 of the Act. But where a fictitious item of property is included in the document or an item of property which actually existed but which the parties did not intend to convey is intentionally included in the document with the sole object of getting the document registered at a particular place, that amounts to fraud on law of registration. The fact that the property situate within the Sub District is only a small portion when compared to the rest of the property situate outside that Sub District or that the primary intention of the parties was that registration should be in the Sub District where small portion of the property is situate would not by itself constitute fraud. To establish fraud on the law of registration there must be evidence of collusion between the parties (See *Bhagabat Basudev and Ors. v. Api Bewa and Ors.* : AIR 1974 Ori. 180. If the intention of the assignor was not to convey title in a particular property but it was included in the document only to give the Sub Registrar concerned a colour of jurisdiction to register the document, that would amount to fraud on law of registration. The test is the intention of the parties (see *Mathura Prashad and Ors. v. Chandra Narayan Chowdliury and Ors.*, *Collector of Gorakhpur v. Ram Sunder Mal and Ors.* and *Mohmmad Khaja v. Monapa* (supra). The intention can be gathered among other things from non-existence of such property and known absence of title to the property of the vendor. But where the vendor and the

vendee intended that the property included in the document should be transferred, the mere fact that vendor's title over that property is not proved cannot amount to fraud on the law of registration. To constitute fraud it must be shown that the vendor, at the time of registration was aware that he had no title over it (See Mt. Rukhmabai v. Krishna Rao AIR 1952 Nag. 145).

10. The First Appellate Court failed to note that though smaller in extent, item No. 1 property in Ext.B2, assignment deed is admittedly situate within the Sub District of Badiadka and hence the Sub Registrar of that Sub District has got jurisdiction to receive and register the document (Ext.B2) not only to the extent the document concerned property situate within his Sub District but also concerning the suit property situate in another Sub District (Kasargod). So far as item No. 1 of Ext.B2 (situate within the sub district of Badiadka) is concerned respondent of course, has a case that it did not belong to the late Appanna and was deceitfully included in the document to facilitate its registration at SRO, Badiadka. Ext. A5, copy of Patta is produced to show that the said property belonged to one Sarojini Amma. Patta is not a document of title. It can only be evidence title. Fact remained that nobody has come forward setting up a rival claim of title over that property notwithstanding its assignment to appellant No. 1 as per Ext.B2 on 13.10.1978. The late Appanna, asserting title and possession has purported to convey his right, title, interest and possession of the said item of property in favour of appellant No. 1. There is nothing to hold that as on the date of Ext.B2, the late Appanna to his knowledge had no assignable right over that item. As Ext.B2, assignment deed is challenged on the ground of fraud on registration burden lay on the respondent to show that the late Appanna to his knowledge at the relevant time had no assignable right over that property as he purported to convey. No such evidence is adduced. Respondent could have examined Sarojini Amma referred to in Ext.A5 or her legal representative as the case may be. That is not done. It is one thing to say that by assignment of item No. 1 as per Ext.B2 appellant No. 1 did not get right, title, interest or possession of that item. It is a different thing to say that the said item was included in Ext.B2 deceitfully to facilitate registration of the document at SRO, Badiadka. First appellate court went wrong on facts, evidence and on law in holding that registration of Ext.B2 at SRO, Badiadka amounted to fraud on the law of registration and hence the document is vitiated.

11. Assuming that registration of Ext.B2 at SRO, Badiadka amounted to fraud on law of registration, could the respondent being legal heir of the late Appanna seek to set aside the same on that ground, is the next question of decision. The document got registered fraudulently (as alleged) is not ab initio void but is only voidable (see Muhammad Abdul Razack v. Syed Meera Ummal (supra)). If one were persuaded to think that item No. 1 of Ext.B2, assignment deed did not belong to the late Appanna and it was included in the document deceitfully to facilitate its registration at SRO, Badiadka the late Appanna was, and should be a party to that fraud (at least in the absence of evidence to exonerate him). A party to a fraudulent transaction cannot after the transaction has gone through, turn round and take advantage of his own fraud. The principle, 'In pari delicto potior est conditio defendentis, et possidentis' would debar a party to the fraud from claiming the benefit of his own fraud. Story, in 'Commentaries on Equity Jurisprudence' 1892, 2nd Edition at Page 191 states,.In general (for it is not universally true) where parties are concerned in illegal agreements or other transactions, whether they are mala prohibita or male in se, courts of equity, following the rule of law as to participators in a common crime, will not interpose to grant any relief; acting upon the known maxim, In pari delicto potior est conditio defendentis, et possidentis. But in cases where the agreements or other transactions are repudiated on account of their being against public policy, the circumstances, that the relief is asked by a party who is particeps criminis, is not in equity materialRelief is not granted where both parties are truly in pari delicto, unless in cases where public policy would thereby be promoted....

12. The maxim is applied in Kearly v. Thomson and Anr. 1890(24) QBD 742 where it is held that where the plaintiff and defendant are in pari delicto and if the contract is carried out, plaintiff cannot seek relief under the unlawful contract. Kearly v. Thomson and Anr. (supra) has quoted with approval the following words of Lord Chief Justice in Collins v. Blantern 1 Sm. L.C. 7th Edn. 369,.Whoever is a party to an unlawful contract, if he hath once paid the money stipulated to be paid in pursuance thereof, he shall not have the help of the court to fetch it back again; you shall not have a right of action when you come into a court of justice in this unclean manner to recover it back..

Referring to the above view Fry, C.J., has stated in *Kearly v. Thomson and Anr.* (supra),.To that general rule there are undoubtedly several exceptions, or apparent exceptions. One of those is the case of oppressor and oppressed, in which case usually the oppressed party may recover the money back from the oppressor. In that class of cases the delictum is not par, and therefore the maxim does not apply. Again there are other illegalities which arise where a statute has been intended to protect a class of persons, and the person seeking to recover is a member of the protected class....

13. Applying the maxim to a case where parties to the document joined in fraud on registration, the Madras High Court in *Venkataswami v. Venkatasubbayya* (supra) held that no relief could be given to the plaintiffs (vendors) in recovering possession of the property. On the facts and circumstances, the present case does not come within any of the exceptions stated by Story or Fry, C.J. (supra) and hence the late Appanna should be taken as in pari delicto in obtaining registration at S.R.O., Badiadka (fraudulently as alleged by respondent). The late Appanna could not therefore seek cancellation of Ext.B2, assignment deed on the ground of fraud. If that be so, respondent who is the persona of the deceased (Appanna) could not have a better right - he also cannot seek aid of the court to set aside Ext.B2, assignment deed on the ground of fraud in obtaining registration and recover possession of the property.

14. Is then the suit barred by law of limitation? Learned Munsiff held in the affirmative. First appellate court was of the view that as the suit is brought within 12 years of Ext.B2, assignment deed dated 13.10.1978 on the strength of title, it is within time. That court was also of the view that respondent has filed the suit within three years. of his getting information about the (alleged) fraud by getting a copy of Ext.B2, assignment deed on 6.9.1988. Ext.B2, assignment deed dated 13.10.1978 even if assumed to be vitiated on account of fraud on law of registration is not ab initio void but is only voidable. A voidable document remains in force as valid until it is set aside or cancelled as provided in law. Without setting aside or cancelling the voidable document one cannot recover possession of the property which is transferred to the assignee under that voidable document. In such cases the main relief will be cancellation/setting aside of the document, recovery of possession

being only consequential to cancellation/setting aside of the document and such suits are governed by Article 59 of the Limitation Act and not Article 65 of that Act. Article 65 could apply when the impugned document is ab initio void, is non-est in the eye of law and hence could be ignored and substantive relief on the strength of title which is unaffected by the void document could be prayed for. As per Article 59 of the Limitation Act the period of limitation for a suit to cancel/set aside a voidable document is three years which begins to run from the day facts entitling the plaintiff to have the instrument (or decree as the case may be) cancelled or set aside first becomes known to him. Hence respondent was obliged to bring the suit within three years of his getting knowledge about the fraud he relied upon to cancel Ext.B2, assignment deed. According to him in the year 1988 appellant No. 1 and others attempted to trespass into the suit property in his possession, he obtained a copy of Ext.B2 on 6.9.1988 and then alone learnt about the (alleged) fraud. Ext. B2, assignment deed dated 13.10.1978 says that possession of the suit property was conveyed to appellant No. 1 on its date (13.10.1978) itself. That, respondent produced some revenue receipts is not sufficient to prove possession of the property with the late Appanna or himself after 13.10.1978. Revenue receipts are produced by the appellant also. As per Ext.B3, assignment deed dated 17.06.1980 appellant No. 1 assigned title and possession of half of the suit property to appellant No. 2. The late Appanna is an attester in Ext.B3. Ext.B1, assignment deed dated 10.11.1980 executed by the late Appanna to C.H. Ahammad concerning a property adjacent to the suit property in which respondent is an attester states eastern boundary of item No. 1 of that property as the property in the possession of appellant Nos. 1 and 2 which, it is not disputed before me is the suit property. Respondent as P.W1 admits that contents of Ext.B1 was read over to him before he attested it and that it is correct. Thus, respondent must be imputed with knowledge of appellant Nos. 1 and 2 (Ext.B4, assignment deed executed by appellant No. 1 to appellant No. 3 regarding the remaining half of the suit property comes on 6.8.1981) being in possession of the suit property as per Ext.B2, assignment deed at least by 10.11.1980. Late Appanna himself is an attester in Ext.B3, assignment deed dated 17.6.1980 executed by appellant No. 1 to appellant No. 2 concerning one half of the suit property. In that situation respondent could not claim that he was in possession of the suit property till

appellant No. 1 and others illegally trespassed into it in the year 1988 and he got information about the alleged fraud only on getting a copy of Ext.B2 on 06.09.1988. Period of limitation for the suit has begun to run from 17.06.1980 (date of Ext.B3 in which the late Appanna is an attester and at least from 10.11.1980 (date of Ext.B1 to which respondent is an attester) and it expired by 09.11.1983 if at any rate. The suit filed in the year 1990 is clearly out of time. First appellate court without adverting to the evidence simply accepted the version of respondent that he got knowledge about the (alleged) fraud only on 06.09.1988. The finding is perverse as being opposed to the evidence as admitted by the respondent. The first appellate court was also in error legally in holding that the suit brought within 12 years of Ext.B2 (as if Article 65 of the Limitation Act applied) is within time. The findings of the first appellate court are clearly illegal and cannot stand legal scrutiny. I answer the substantial questions of law framed in the above line. Consequently, judgment and decree of the first appellate court cannot be sustained, are liable to be set aside and unhesitatingly, I do so.

The Second Appeal succeeds. Judgment and decree of the first appellate court are set aside and that of the Trial Court are restored. I direct the parties to suffer their respective costs.

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