SUKHBIRI DEVI & ORS. A

v.

UNION OF INDIA & ORS.

(Civil Appeal No. 10834 of 2010)

SEPTEMBER 29, 2022 B

**[AJAY RASTOGI AND C. T. RAVIKUMAR, JJ.]**

*Code of Civil Procedure, 1908 – Or.XIV, r.2(2) – Whether the issue of limitation can be determined as a preliminary issue u/Or. XIV, r.2(2) – Held: Yes – The issue of limitation can be framed and determined as a preliminary issue u/Or. XIV, r.2(2)(b), CPC in a case where it can be decided on admitted facts – In the present case, the findings of the Trial Court with respect to preliminary issue of limitation are based on the relevant dates revealed from the pleadings of the plaintiffs in the plaint itself – 'Statements' by a party to proceedings are admissions and facts admitted need not be proved – The manner of consideration by the Trial Court which ultimately resulted in dismissal of the suit reveals that it had determined the preliminary issue regarding the period of limitation with reference to the averments in the plaint and the dismissal of the suit was in accordance with the decision on the said preliminary issue – No perversity or illegality in the concurrent findings of the courts below warranting interference – Limitation Act,1963 – Article 136, 17, 65 – Evidence Act, 1872 – ss.17, 18, 58.* C D E

*Constitution of India – Article 136 – Scope of, against concurrent findings – Held: Interference with the concurrent findings in an appeal u/Article 136 is to be made sparingly, that too when the judgment impugned is absolutely perverse – On appreciation of evidence, possibility of another view also cannot be a reason for substitution of a plausible view taken and confirmed.* F

*Deeds and documents – Relinquishment deed – Held: Consideration of validity of a relinquishment deed and consideration of the period of limitation with reference to the same are different and distinct.* G

*Practice and Procedure – Non-mentioning of provision in the order – Held: Misquoting or non-quoting of a provision by itself* H

*will not make an order bad so long as the relevant enabling provision is in existence and it was correctly applied though without specifically mentioning it.*

*Words & Phrases – "admitted facts", "admission" – Discussed – Evidence Act, 1872 – ss.17, 18, 58.*

**Dismissing the appeal, the Court**

**HELD: 1.1 Interference with the concurrent findings in an appeal under Article 136 of the Constitution is to be made sparingly, that too when the judgment impugned is absolutely perverse. On appreciation of evidence another view is possible also cannot be a reason for substitution of a plausible view taken and confirmed. We will now, bearing in mind the settled position, proceed to consider as to whether the said appellate power invites invocation in the case on hand. [Para 4][530-H; 531-A-B]**

**1.2 'Statements' by a party to proceedings are admissions and facts admitted need not be proved. The appellants cannot legally have any dispute or grievance in taking their statements in the plaint capable of determining the starting point of limitation for the purpose of application of Order XIV, Rule 2(2)(b) of the CPC. Though, limitation is a mixed question of law and facts it will shed the said character and would get confined to one of question of law when the foundational fact(s), determining the starting point of limitation is vividly and specifically made in the plaint averments. In such a circumstance, if the Court concerned is of the opinion that limitation could be framed as a preliminary point and it warrants postponement of settlement of other issues till determination of that issue, it may frame the same as a preliminary issue and may deal with the suit only in accordance with the decision on that issue. It cannot be said that such an approach is impermissible in law and in fact, it is perfectly permissible under Order XIV, Rule 2(2)(b), CPC and legal in such circumstances. The issue limitation can be framed and determined as a preliminary issue under Order XIV, Rule 2(2)(b), CPC in a case where it can be decided on admitted facts. [Paras 17 and 18][536-D-G]**

**1.3 A perusal of Article 136 of the Limitation Act would reveal the indubitable position that it applies only when an application for execution of any decree (other than a decree granting a mandatory injunction) or order of any Civil Court is to be filed. In the instant such a stage for application of Article 136 of the Limitation Act had not reached and, in troth, the question involved is relatable only to the time restriction for initiating legal proceedings to seek the alleged legal right. In the said circumstances, the inevitable conclusion can only be that Article 136 got no application in the case on hand and as such the Appellants could not claim for a larger period of limitation of 12 years. [Paras 19-21][538-F-H; 539-A]**

**1.4 The findings of the Trial Court with respect to preliminary issue of limitation are based on the relevant dates revealed from the pleadings of the plaintiffs in the plaint itself. True that in the plaint it is repeatedly alleged that the relinquishment deed was obtained fraudulently by the 5th respondent. However, conspicuously its date was not mentioned. But then the plaint averment is that their predecessor-in-interest Shri 'NS', on coming to know about the use of the said Relinquishment Deed, had preferred an objection on 05.04.1991 to the authorities whereunder he sought not only for its cancellation but also on the ground of obtainment by playing fraud for refraining them from issuing allotment of the alternative plot in the exclusive name of the 5th respondent. In this context it is also relevant to note that going by the plaint averments after the death of Shri 'NS' on 14.05.1993 the original first plaintiff, who is none other than one of the sons of Shri 'NS', filed representations on the lines of the objection taken up by his father. Even if non-mentioning of the date of Relinquishment Deed is not taken as purposeful that cannot and will not therefore save the plaintiffs from the inescapable, adverse finding on the question of limitation to bring in a suit against the said Relinquishment Deed. Evidently, Suit No.410 of 2000 was filed only on 14.06.2000. Thus, it is very much clear from the plaint averments that the Relinquishment Deed is anterior to the date of letter of intimation to the 5th respondent (08.03.1991) and obviously, the date of objection against the same was firstly preferred by deceased 'NS' viz., 05.04.1991. Evidently, the aforesaid two dates specifically**

A **mentioned in the plaint were taken into account by the Trial Court as also by the First Appellate Court and the High Court in the matter of consideration of the question "whether the suit was barred by limitation." The manner of consideration by the Trial Court which ultimately resulted in dismissal of suit No.410/2000**
B **would reveal, as stated hereinbefore, that it had determined the preliminary issue regarding the period of limitation with reference to the averments in the plaint. The dismissal of the suit was in accordance with the decision on the said preliminary issue. [Para 22][539-B-H]**

C **1.5 Coming to the judgment of the First Appellate Court whereby it dismissed the appeals of the plaintiffs and confirmed the judgment and decree of the Trial Court it is evident that the various contentions raised by the appellants therein were considered in detail by the First Appellate Court. The First Appellate Court correctly exposited the legal position that the**
D **question of limitation is to be considered not with reference to the validity of the Relinquishment Deed. In this context it is also to be noted that despite taking up a specific allegation that the Relinquishment Deed was fraudulently obtained by the 5th respondent, the plaintiffs had not chosen to assail and seek for its setting aside. Even after seeking for cancellation of the**
E **relinquishment deed before the authorities as early as on 05.04.1991 the predecessor-in-interest had not chosen to get it set aside by approaching a competent civil court during his lifetime. Upon his death on 14.05.1993, though the period of limitation for seeking to set it aside did not get arrested and ran**
F **against the plaintiffs who stepped into the shoes of 'NS', none of them seek to get it set aside by moving a civil court, within the period of limitation. The pleadings in this appeal and the arguments advanced would show that till date with such a prayer no competent civil court was moved by the original plaintiffs and also the**
G **appellants herein. In short, in the absence of any successful challenge against the validity of the said Relinquishment Deed by making proper prayer in an appropriate proceedings, and that too within the prescribed period of limitation, the conclusion and finding of the First Appellate Court, as aforesaid, cannot be said to be perverse or illegal as there can be no doubt with respect to**
H **the position that consideration of validity of a relinquishment deed**

**and consideration of the period of limitation with reference to the same are different and distinct. [Para 23][540-A-G]**

**1.6 The challenge against the impugned judgment of the High Court is that it wrongly applied Article 58 of the Limitation Act while confirming the concurrent decisions of the First Appellate Court and the Trial Court. In this context, it is relevant to note the prayers made in the suit by the plaintiffs which were extracted hereinbefore. Undoubtedly, the plaintiffs sought for declarations and thereby, made the nature of the suit as declaratory. This position is indisputable. It is true that the Trial Court though found the period of limitation as three years taking into account the nature of the reliefs it did not specifically mention the relevant provision in its judgment. There can be little doubt with respect to the position that misquoting or non-quoting of a provision by itself will not make an order bad so long as the relevant enabling provision is in existence and it was correctly applied though without specifically mentioning it. The High Court had only referred to the relevant, applicable provision under the Limitation Act upon considering the nature of the suit and the reliefs sought for, in the plaint. There is no perversity or illegality in the finding of the High Court for sustaining the concurrent findings with respect to the issue whether the suit was barred by limitation. [Paras 25][541-B-F]**

**1.7 The relief sought for, in suit No.410/2000 would reveal that the first prayer, which is the main prayer, is declaratory in nature. Even according to the plaintiffs, as revealed from the plaint the second prayer is only consequential relief. A perusal of the same would undoubtedly show that it is consequential and not an independent one and therefore the courts below are right in holding that the said prayer is grantable only if the first prayer is granted. In this case based on the determination on the preliminary issue of limitation and in accordance with the decision on that preliminary issue the suit was dismissed. The provisions under Order XIV Rule 2(1) and Rule 2(2)(b) permit to deal with and dispose of a suit in accordance with the decision on the preliminary issue. In the case on hand in view of the nature of the finding on the preliminary issue and the consequential**

**consideration of the suit in terms of Order XIV Rule 2(2)(b) and taking note of the fact that the suit do not survive after such consideration there is no reason to consider the contention of the appellants with reference to Order VII Rule 11 based on the decisions relied on by them. So also, the contentions of the appellants based on Articles 17 and 65 also would pale into insignificance and warrant no consideration at all, in the circumstances. There is absolutely no perversity or illegality in the concurrent findings of the courts below warranting interference in invocation of the power under Article 136 of the Constitution of India. [Paras 26, 27][541-F-H; 542-A-C]**

*Nusli Neville Wadia v. Ivory Properties* **(2020) 6 SCC 557 : [2019] 15 SCR 795;** *National Insurance Co. Ltd. Vs. Rattani* **(2009) 2 SCC 75 : [2008] 17 SCR 1251;** *Ranganayakamma & Anr. v. K.S. Prakash (Dead) By LRs. & Ors.* **(2008) 15 SCC 673 : [2008] 9 SCR 297 and** *Vimal Chand Ghevarchand Jain & Ors. v. Ramakant Eknath Jadoo* **(2009) 5 SCC 713;** *State of Rajasthan v. Shiv Dayal* **(2019) 8 SCC 637 : [2019] 10 SCR 243 – relied on.**

*C. Natarajan v. Ashim Bai & Anr*. **(2007) 14 SCC 183 : [2007] 11 SCR 33;** *Popat And Kotecha Property v. State Bank of India Staff Assn* **(2005) 7 SCC 510 : [2005] 2 Suppl. SCR 1030;** *Daya Singh & Anr. v. Gurdev Singh (Dead) by LRs. & Ors*. **(2010) 2 SCC 194;** *Mt. Bolo v. Mt. Koklan* **(2010) 2 SCC 194 : [2010] 1 SCR 194;** *Mst. Rukhmabai v. Lala Laxminarayan* **[1960] 2 SCR 253;** *Mongin Realty and Build Well Private Limited v. Manik Sethi* **2022 SCC Online SC 156;** *Bikoba Deora Gaikwad & Ors. v. Hirabai Marutirao Ghorgare & Ors.* **(2008) 8 SCC 198 : [2008] 9 SCR 1038;** *Narinder Kaur & Anr. v. Amar Jeet Singh Sethi & Anr.* **2000 III A D (Delhi), 599;** *M/s Crescent Petroleum Ltd. v. M. V. Monchegorsk & Ors.* **AIR 2000 Bombay 161 – referred to.**

**Case Law Reference**

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| **[2019] 10 SCR 243** | **relied on** | **Para 3** |
| **[2007] 11 SCR 33** | **referred to** | **Para 11** |
| **[2005] 2 Suppl. SCR 1030** | **referred to** | **Para 11** |
| **[2010] 1 SCR 194** | **referred to** | **Para 11** |
| **[1960] 2 SCR 253** | **referred to** | **Para 11** |
| **[2019] 15 SCR 795** | **relied on** | **Para 15** |
| **[2008] 17 SCR 1251** | **relied on** | **Para 16** |
| **[2008] 9 SCR 297** | **relied on** | **Para 16** |
| **[2008] 9 SCR 1038** | **referred to** | **Para 20** |

CIVIL ORIGINAL JURISDICTION: Civil Appeal No. 10834 of 2010.

From the Judgment and Order dated 25.08.2009 of the High Court of Delhi at New Delhi in R.S.A. No. 79 of 2007.

Arvind Kumar, Chiranjeev Johri, Mrs. Laxmi Arvind, Advs. for the Appellants.

Anupam Lal Das, Sr. Adv., Ms. Anirudh Singh, Krishanu Barua, Rahul Pratap, Anish Kumar Gupta, Ms. Archana Preeti Gupta, G. S. Makkar, Mrs. Anil Katiyar, Ms. Binu Tamta, Dhruv Tamta, Pradeep Kumar Mathur, Advs. for the Respondents.

The Judgment of the Court was delivered by

**C. T. RAVIKUMAR, J.**

1. This appeal by Special Leave is directed against the judgment and order in RSA No.79/2007 dated 25.08.2009 passed by the High Court of Delhi. The appellants were plaintiffs in Suit No.410 of 2000 on the file of the Court presided over by Shri Vidya Prakash, Civil Judge, Delhi, (hereinafter referred to as 'the Trial Court'), filed seeking reliefs mainly against the 5th Respondent. The Trial Court framed a preliminary issue on the question of limitation, evidently, upon forming the opinion that case may be disposed of on an issue of law and that it warrants postponement of settlement of other issues until after that issue has been determined and to deal with the suit in accordance with the decision on that issue.

A Accordingly, the Trial Court framed a preliminary question as to "whether the Suit is within the limitation". Upon answering the same in the negative, in accordance with the said decision, the suit was dismissed as per judgment dated 13.05.2005. The defendants challenged the said judgment and decree before the Court presided over by Shri Sukhdev Singh, Additional District Judge, Delhi, (hereinafter referred to as the 'First
B Appellate Court') in Civil Appeal No.99/2005 and it dismissed the appeal and confirmed the judgment and decree of the Trial Court, as per judgment dated 08.12.2006. Thereupon, they took up the matter in second appeal before the High Court. As per the impugned judgment dated 25.08.2009 the High Court concurred with the findings and dismissed the appeal
C answering the question of law against the appellants. Leave was granted in Special Leave Petition No.34648 of 2009 filed against the stated judgment of the High Court and in this civil appeal, the respondents were granted liberty to file counter affidavits.

2. We have heard the learned counsel appearing for the appellants
D and also the learned counsel appearing for the respective respondents.

3. At the outset, it is to be noted that the challenge in this appeal is against concurrent findings by three Courts, as mentioned hereinbefore. The scope of an appeal by special leave under Article 136 of the Constitution of India against the concurrent findings is well settled. In
E **State of Rajasthan vs. Shiv Dayal**[1] reiterating the settled position, this Court held that a concurrent finding of fact is binding, unless it is infected with perversity. It was held therein:-

> "When any concurrent finding of fact is assailed in second appeal, the appellant is entitled to point out that it is bad in law because it
F was recorded de hors the pleadings or it was based on no evidence or it was based on misreading of material documentary evidence or it was recorded against any provision of law and lastly, the decision is one which no Judge acting judicially could reasonably have reached. (see observation made by learned Judge Vivian Bose, J. as His Lordship then was a Judge of the Nagpur High
G Court in Rajeshwar Vishwanath Mamidwar & Ors. vs. Dashrath Narayan Chilwelkar & Ors., AIR 1943 Nagpur 117 Para 43)."

4. Thus, evidently, the settled position is that interference with the concurrent findings in an appeal under Article 136 of the Constitution is

H [1] (2019) 8 SCC 637.

to be made sparingly, that too when the judgment impugned is absolutely perverse. On appreciation of evidence another view is possible also cannot be a reason for substitution of a plausible view taken and confirmed. We will now, bearing in mind the settled position, proceed to consider as to whether the said appellate power invites invocation in the case on hand.

5. For making a consideration as mentioned above, it is only apposite to make a brief reference to the facts involved in the case revealed from the averments in the plaint. The predecessor-in-interest of the appellants, viz., Shri Rama Nand, was the bhumidar of certain extent of agricultural land situated in Village Naraina in Delhi. The said plot of agricultural land was acquired and Award No.19/75-76 was passed in relation to its acquisition on 09.01.1976. Subsequently, Rama Nand died, leaving behind his widow, two sons – Nahar Singh and Dhan Singh and four daughters - Smt. Shakuntala Devi, Smt. Krishna Devi, Smt. Parvati Devi and Smt. Santhosh. Later, the widow of Shri Rama Nand also died. As per the policy, whereunder the land was acquired, the bhumidar was entitled to allotment of alternative residential plot in lieu of the acquired land. Later, the alternative plot was allotted by respondent Nos.1 to 4 in the exclusive name of Dhan Singh, upon his production of registered Relinquishment Deed, as per letter No.F- 31(11)/8/87/L&B/ ALT/8226 dated 08.03.1991. The said letter dated 08.03.1991 to the 5th respondent for allotment of an alternative residential plot in his name, based on the Relinquishment Deed issued by the other legal heirs in his favour, came to the notice of Shri Nahar Singh, who thereupon filed an objection on 05.04.1991, before respondent Nos.1-4 stating that alternative plot shall not be allotted in the exclusive name of Dhan Singh. Further, it was stated therein that the Relinquishment Deed produced before the Authorities was obtained fraudulently by Dhan Singh. Subsequently, Nahar Singh died on 14.05.1993. Thereupon, his widow and children stepped into his shoes. Furthermore, it is averred in the plaint that thereupon, the original plaintiff No.1 submitted similar representations to the Authorities in a bid to make them refrain from allotting the alternative plot in the exclusive name of the 5th respondent. It is thereafter that they instituted Suit No.410 of 2000, on 14.06.2000. All these averments are specifically made in the said plaint. At this juncture, it is to be noted that the four sisters of Nahar Singh who are also the legal heirs of deceased Rama Nand did not join them for instituting the suit against Dhan Singh

A (the 5th respondent in the Suit) and virtually, they were made proforma defendants therein.

6. A bare perusal of the plaint would reveal that the suit was instituted for declaratory reliefs, inter alia, stating that the cause of action arose when application for alternative plot was made by the Defendant
B No.5 by playing fraud and claiming himself to be the sole and exclusive heir of deceased Rama Nand and further when objections through representations were made to the wrongful application of allotment, on number of dates.

Based on such averments it was prayed for a decree declaring
C that the Plaintiffs are the co- owners in the allotment of the suit Plot No.13, Type A-I in Sector 26, Rohini, New Delhi (allotted in lieu of permanent acquisition of the lands of Shri Rama Nand, s/o Bhupan) and the Defendant No.5 is not the exclusive allotted/owner of the said residential plot in suit. The further relief sought for is entirely dependant on the above declaratory relief.
D

7. Defendant Nos.1,2 and 4 (respondent Nos.1,2 and 4 herein) filed a joint written statement and the fifth respondent filed it separately. In view of the nature of the judgment of the Trial Court, the Appellate Court and the High Court and also nature of consideration, which we are intending to undertake, it is absolutely unnecessary to delve into their
E pleadings.

8. Based on the impugned judgment, the rival pleadings and the arguments advanced before us, following substantial questions call for consideration:-

F (a) Whether the issue of limitation can be determined as a preliminary issue under Order XIV, Rule 2(2) of the Code of Civil Procedure (for short 'CPC')?

(b) Whether a larger period of limitation of 12 years would be available to the plaintiffs to bring in a suit by virtue of application of
G Article 136 of the Limitation Act, 1968 (for short 'The Act'), as contended by the appellant and in the facts and circumstances obtained in this case?

(c) Whether Article 17 or Article 65 of the Act got any application, as contended by the appellants, in view of the plaint averments, in case Article 136 of the Act is found inapplicable?

H

9. As relates the first question bifold contentions have been raised by the appellants. Limitation being a mixed question of law and facts, in view of the provisions under Order XIV, Rule 2(2), the course adopted by the Trial Court and confirmed by the Appellate Court and the High Court, is absolutely impermissible in law, it is contended. If at all that preliminary issue was to be considered it ought to have been made under Rule 11, Order VII, CPC and then, subject to its outcome, at the worst, the plaint could have been rejected in terms of Clause (d) of Rule 11 of Order VII, CPC, it is further contended.

10. The contentions raised in resistance on behalf of the 5th respondent appears to be syllogistic. According to him, the foundational facts for determining the nature of Suit No.410/2000 as declaratory suit and the starting point of limitation as relates a declaratory suit are available in the plaint averments themselves. The second proposition is that despite coming to know about the registered Relinquishment Deed dated 21.10.1985, the predecessor- in-interest of the plaintiffs Shri Nahar Singh and/or the plaintiffs did not resort to civil remedy to get it set aside evenafter maintaining the stand that it was fraudulently obtained. The third proposition is that repeated representations or applications to respondent Nos.1 to 4 would not extend the period of limitation. To wit, according to the 5th respondent the suit was barred by limitation on those counts and, it was rightly dismissed as nothing further could survive for adjudication in the suit thenceforth.

11. Citing various decisions, such as **C. Natarajan Vs. Ashim Bai & Anr.[2], Popat And Kotecha Property Vs. State Bank of India Staff Assn[3], Daya Singh & Anr. Vs. Gurdev Singh (Dead) by LRs. & Ors.[4], Mt. Bolo vs. Mt. Koklan[5] and Mst. Rukhmabai Vs. Lala Laxminarayan[6]** the appellants attempted to drive home their points.

12. In **C. Natarajan's** case[2] and in **Popat And Kotecha Property's** case[3] the plaints were rejected on the ground of being barred by Order VII, Rule 11(d), CPC unlike the case on hand where the suit was dismissed in accordance with the decision on the preliminary issue. This Court held that Order VII, Rule 11(d) would apply if the averments in the plaint were given face value and taken to be correct in their entirety

[2] (2007) 14 SCC 183
[3] (2005) 7 SCC 510
[4] (2010) 2 SCC 194
[5] AIR 1930 PC 270
[6] 1960 (2) SCR 253

A appear to be barred by any law. Furthermore, it was held that in that regard the Court would not be entitled to consider the case of the defence.

13. The Privy Council in the decision in **Mt. Bolo's** case[5] held that there could be no 'right to sue' until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal
B threat to infringe that right by the defendant against whom the suit is instituted. In **Daya Singh's** case[4] the question was with respect to the 'right to sue' for declaration. This Court, after referring to the decision in **Mt. Bolo's** case[5], held that a mere adverse entry in revenue records would not give rise to cause of action and it would accrue only when right asserted in the suit is infringed or when there is a clear and
C unequivocal threat to infringe that right.

14. In **Mst. Rukhmabai**'s case[6], involving question of limitation in a suit for declaration of a deed as sham**,** this court considered the question of limitation under Article 120 of the Limitation Act, 1908 and held that the 'right to sue' would accrue when the defendant clearly and
D unequivocally threatened to infringe the right asserted by the plaintiff in the suit. Further it was held that every threat to such a right would not amount to a clear and unequivocal threat to compel him to file a suit and whether any particular threat would give rise to a compulsory cause of action would depend on the question as to whether that threat effectively
E invades or jeopardise the said right. In case on further deliberation a consideration of the case on hand in the light of the above decisions became inevitable, then we will undertake such an exercise.

15. Now, we will consider the first question: 'whether the issue of limitation can be determined as a preliminary issue under Order XIV,
F Rule 2, CPC'. It is no longer *res integra.* In the decision in **Mongin Realty and Build Well Private Limited vs. Manik Sethi[7],** even while holding that the course of action followed by the learned Trial Judge of directing the parties to address arguments on the issue of limitation as irregular since it being a case where adduction of evidence was required, a two-Judge Bench of this Court referred to a three-Judge Bench
G decision of this Court in **Nusli Neville Wadia Vs. Ivory Properties[8]** observing that the issue therein was whether the issue of limitation could be determined as a preliminary issue under Order XIV, Rule 2, CPC. After taking note of the fact that going by the decision in **Nusli Neville**

[7] 2022 SCC Online SC 156

H [8] [(2020) 6 SCC 557]

**Wadia's case[8],** in a case where question of limitation could be decided based on admitted facts it could be decided as a preliminary issue under Order XIV, Rule 2(2)(b), CPC., the two- Judge Bench held that in the case before their Lordships the question of limitation could not have been decided as a preliminary issue under Order XIV, Rule 2 of CPC as determination of the issue of limitation in that case was not a pure question of law. In the said contextual situation it is worthy and appropriate to refer to paragraphs 51, in so far as it is relevant, and 52 of the decision in **Nusli Neville Wadia's case[8]** and they read thus:-

> "51.[…] As per Order 14 Rule 1, issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other. The issues are framed on the material proposition, denied by another party. There are issues of facts and issues of law. In case specific facts are admitted, and is the question of law arises which is dependent upon the outcome of admitted facts, it is open to the court to pronounce the judgment based on admitted facts and the preliminary question of law under the provisions of Order 14 Rule 2. In Order 14 Rule 2(1), the court may decide the case on a preliminary issue. It has to pronounce the judgment on all issues. Order 14 Rule 2(2) makes a departure and the court may decide the question of law as to jurisdiction of the court or a bar created to the suit by any law for the time being in force, such as under the Limitation Act.
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> 52. […] In a case, question of limitation can be decided based on admitted facts, it can be decided as a preliminary issue under Order 14 Rule 2(2)(b). Once facts are disputed about limitation, the determination of the question of limitation also cannot be made under Order 14 Rule 2(2) as a preliminary issue or any other such issue of law which requires examination of the disputed facts. In case of dispute as to facts, is necessary to be determined to give a finding on a question of law. Such question cannot be decided as a preliminary issue. In a case, the question of jurisdiction also depends upon the proof of facts which are disputed and the question of law is dependent upon the outcome of the investigation of the facts, such question of law cannot be decided as a preliminary issue, is settled proposition of law either before the amendment of CPC and post amendment in the year 1976."
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> (Emphasis added)

16. In view of the legal position obtained from the decision in **Nusli Neville Wadia's case**[8] the following decisions also assume relevance. In the decision in **National Insurance Co. Ltd. Vs. Rattani**[9] this Court held that an admission made in the pleadings by a party is admissible in evidence *proprio vigore.* Equally well settled is the principle of law that an admission made by a party in his pleadings is admissible against him *proprio vigore* (see the decisions in **Ranganayakamma & Anr. Vs. K.S. Prakash (Dead) By LRs. & Ors.**[10] and **Vimal Chand Ghevarchand Jain & Ors. Vs. Ramakant Eknath Jadoo**[11].

17. In the context of the usage of the expression "admitted facts" in paragraph 52 of the decision in **Nusli Neville Wadia's case**[8] and the word 'admission' employed the **National Insurance CO. Ltd. case**[9] a reference to Sections 17, 18 and 58 of the Indian Evidence Act would not be inappropriate. A conjoint reading of the said provision would reveal that 'statements' by a party to proceedings are admissions and facts admitted need not be proved.

18. We referred to the said provisions and decisions only to stress upon the point that the appellants cannot legally have any dispute or grievance in taking their statements in the plaint capable of determining the starting point of limitation for the purpose of application of Order XIV, Rule 2(2)(b) of the CPC. Though, limitation is a mixed question of law and facts it will shed the said character and would get confined to one of question of law when the foundational fact(s), determining the starting point of limitation is vividly and specifically made in the plaint averments. In such a circumstance, if the Court concerned is of the opinion that limitation could be framed as a preliminary point and it warrants postponement of settlement of other issues till determination of that issue, it may frame the same as a preliminary issue and may deal with the suit only in accordance with the decision on that issue. It cannot be said that such an approach is impermissible in law and in fact, it is perfectly permissible under Order XIV, Rule 2(2)(b), CPC and legal in such circumstances. In short, in view of the decisions and the provisions, referred above, it is clear that the issue limitation can be framed and determined as a preliminary issue under Order XIV, Rule 2(2)(b), CPC in a case where it can be decided on admitted facts.

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[9] [(2009) 2 SCC 75]
[10] [(2008) 15 SCC 673]
[11] [(2009) 5 SCC 713]

19. With the above observations and conclusions we will now, refer to the findings returned by the Trial Court on the stated preliminary issue of limitation, with a view to answer the question as to whether the impugned judgment confirming the First Appellate Court which, in turn, confirmed the judgment and decree of the Trial Court, requires intervention. In that regard it is only apposite to refer to the following recital from the Trial Court's judgment carrying plaint averments indicating the starting point of limitation and also findings on the preliminary issue:

> "As per averments made in para 8 of the plaint plaintiffs themselves have mentioned that their predecessor in interest alongwith defendants Nos. 6 to 9 had executed relinquishment deed in favour of defendant no. 5. Although they have also taken the plea that same was obtained defendant no. 5 by playing fraud on the pretext of mutation of residential house in MCD records. Such averments made in the said para goes to show that Ld. Predecessor in interest of plaintiffs was very well aware about the execution of registered release deed since date of its execution. Even if it be considered that defendant no. 5 had played fraud upon predecessor in interest of plaintiffs and the said fraud came to the knowledge of Sh. Nahar Singh through letter dated. 8.3.1991 then the period of limitation for seeking said relinquishment deed as null and void started the said date i.e. 8.3.1991. The reason being that plaintiffs are seeking declaration to the effect that they are co-owners of the suit plot and defendant no. 5 is not the exclusive owner thereof. The said relief can be granted by the court only when the relinquishment deed dated 21.10.1985 is held to be illegal null and void and not binding upon them. In other words, unless and until the said relinquishment deed is held to be illegal and not binding on the executants, the plaintiffs cannot be declared as co-owners of the suit plot along with defendants no. 5 to 9. Therefore, the plaintiffs are also seeking declaration regarding cancellation of release deed dated 21.10.1985 indirectly which is being alleged as having been obtained through fraud and which fact admittedly came to their knowledge on 8/3/1991. Plaintiffs are claiming their title through Sh. Nahar Singh one of the legal heirs of deceased Sh. Rama Nand. Once Sh. Nahar Singh came to know about the fraud and illegality of the release deed the period of limitation started running from the said date of cancellation and

A mere factum regarding death of Sh. Nahar Singh would not stop the period of limitation once it has been started. Plaintiffs have stepped into the shoes of Sh. Nahar Singh and were, therefore, required to challenge the release deed within the period of limitation prescribed by law. It is needless to mention here that period of limitation prescribed for filing such a suit for declaration challenging B the release deed in question is three years from the date of accrual of cause of action which in the present case arose, in the opinion of the court, on 8/3/1991 when Sh. Nahar Singh came to know about the alleged fraud being played by defendant no. 5 upon him along with defendants no. 6 to 9. The present suit has been filed C only on 14.6.2000, therefore, the present suit is barred by limitation. Hence, court finds merit in the arguments raised on behalf of defendants that the present suit is not maintainable being barred by limitation. The submissions made on behalf of plaintiffs that there were several representations being submitted before various Authorities by plaintiffs from time to time and period of limitation D was continuing during all these period is without any merit as mere sending representations on behalf of plaintiffs with authorities cannot extend period of limitation. The plaintiffs slept over their right during the whole period of limitation and therefore they cannot be permitted to plead that the present suit is within the period of E limitation due to sending of representations with the departments. Hence, for all these reasons it is held that the present suit is barred by limitation. Accordingly, issue is decided against the plaintiffs."

20. Before proceeding further with the above- mentioned issues and the findings returned, it is only proper to consider the contention of F the Appellants regarding the applicability of Article 136 of the Limitation Act. According to us, the contention is jesuitical. A perusal of Article 136 of the Limitation Act would reveal the indubitable position that it applies only when an application for execution of any decree (other than a decree granting a mandatory injunction) or order of any Civil Court is to be filed. (See the decision of this Court in **Bikoba Deora Gaikwad** G **& Ors. vs. Hirabai Marutirao Ghorgare & Ors.**[12]

21. In the instant such a stage for application of Article 136 of the Limitation Act had not reached and, in troth, the question involved is relatable only to the time restriction for initiating legal proceedings to

H [12] (2008) 8 SCC 198

seek the alleged legal right. In the said circumstances, the inevitable conclusion can only be that Article 136 got no application in the case on hand and as such the Appellants could not claim for a larger period of limitation of 12 years.

22. The findings of the Trial Court with respect to preliminary issue of limitation are based on the relevant dates revealed from the pleadings of the plaintiffs in the plaint itself. True that in the plaint it is repeatedly alleged that the relinquishment deed was obtained fraudulently by the 5th respondent. However, conspicuously its date was not mentioned. But then the plaint averment is that their predecessor-in-interest Shri Nahar Singh, on coming to know about the use of the said Relinquishment Deed, had preferred an objection on 05.04.1991 to the authorities whereunder he sought not only for its cancellation but also on the ground of obtainment by playing fraud for refraining them from issuing allotment of the alternative plot in the exclusive name of the 5th respondent. In this context it is also relevant to note that going by the plaint averments after the death of Shri Nahar Singh on 14.05.1993 the original first plaintiff, who is none other than one of the sons of Shri Nahar Singh, filed representations on the lines of the objection taken up by his father. Even if non-mentioning of the date of Relinquishment Deed is not taken as purposeful that cannot and will not therefore save the plaintiffs from the inescapable, adverse finding on the question of limitation to bring in a suit against the said Relinquishment Deed. Evidently, Suit No.410 of 2000 was filed only on 14.06.2000. Thus, it is very much clear from the plaint averments that the Relinquishment Deed is anterior to the date of letter of intimation to the 5th respondent (08.03.1991) and obviously, the date of objection against the same was firstly preferred by deceased Nahar Singh viz., 05.04.1991. Evidently, the aforesaid two dates specifically mentioned in the plaint were taken into account by the Trial Court as also by the First Appellate Court and the High Court in the matter of consideration of the question "whether the suit was barred by limitation." The manner of consideration by the Trial Court which ultimately resulted in dismissal of suit No.410/2000 would reveal, as stated hereinbefore, that it had determined the preliminary issue regarding the period of limitation with reference to the averments in the plaint. The dismissal of the suit was in accordance with the decision on the said preliminary issue. Since we have already extracted the operative portion of the Trial Court judgment, we do not think it necessary to refer to its reasons and findings.

A 23. Coming to the judgment of the First Appellate Court whereby it dismissed the appeals of the plaintiffs and confirmed the judgment and decree of the Trial Court it is evident that the various contentions raised by the appellants therein were considered in detail by the First Appellate Court. The judgment would reveal that before the First Appellate Court, besides reiterating the contentions unsuccessfully raised before the Trial Court, the appellants therein / the plaintiffs had contended, relying on the decision in **Narinder Kaur & Anr. Vs. Amar Jeet Singh Sethi & Anr.**[13], that Relinquishment Deeds do not relinquish the share of executant but would have only the effect of transferring the shares. Paragraph 17 of the judgment of the First Appellate Court would reveal that it correctly exposited the legal position that the question of limitation is to be considered not with reference to the validity of the Relinquishment Deed. In this context it is also to be noted that despite taking up a specific allegation that the Relinquishment Deed was fraudulently obtained by the 5th respondent, the plaintiffs had not chosen to assail and seek for its setting aside. As noted earlier, even after seeking for cancellation of the relinquishment deed before the authorities as early as on 05.04.1991 the predecessor-in-interest had not chosen to get it set aside by approaching a competent civil court during his lifetime. Upon his death on 14.05.1993, though the period of limitation for seeking to set it aside did not get arrested and ran against the plaintiffs who stepped into the shoes of Nahar Singh, none of them seek to get it set aside by moving a civil court, within the period of limitation. The pleadings in this appeal and the arguments advanced would show that till date with such a prayer no competent civil court was moved by the original plaintiffs and also the appellants herein. In short, in the absence of any successful challenge against the validity of the said Relinquishment Deed by making proper prayer in an appropriate proceedings, and that too within the prescribed period of limitation, the conclusion and finding of the First Appellate Court, as aforesaid, cannot be said to be perverse or illegal as there can be no doubt with respect to the position that consideration of validity of a relinquishment deed and consideration of the period of limitation with reference to the same are different and distinct.

24. It is also evident that another contention was raised on behalf of the appellants before the First Appellate Court relying on **M/s Crescent Petroleum Ltd. Vs. M.V. Monchegorsk & Ors.**[14] that

[13] [2000 III A D (Delhi), 599]

[14] [AIR 2000 Bombay 161]

power of dismissal of suit on the ground of absence of cause of action shall be exercised by courts sparingly and cautiously and the benefit of doubt must go to the plaintiff. This contention was rightly repelled by the First Appellate Court holding that in the case on hand the question was not one of dismissal on the ground of absence of cause of action but, on the ground of being barred by limitation, reckoning the nature of the suit as declaratory.

25. The challenge against the impugned judgment of the High Court is that it wrongly applied Article 58 of the Limitation Act while confirming the concurrent decisions of the First Appellate Court and the Trial Court. In this context, it is relevant to note the prayers made in the suit by the plaintiffs which were extracted hereinbefore. Undoubtedly, the plaintiffs sought for declarations in the manner referred above and thereby, made the nature of the suit as declaratory. This position is indisputable. It is true that the Trial Court though found the period of limitation as three years taking into account the nature of the reliefs it did not specifically mention the relevant provision in its judgment. There can be little doubt with respect to the position that misquoting or non-quoting of a provision by itself will not make an order bad so long as the relevant enabling provision is in existence and it was correctly applied though without specifically mentioning it. The High Court had only referred to the relevant, applicable provision under the Limitation Act upon considering the nature of the suit and the reliefs sought for, in the plaint. We do not find any perversity or illegality in the finding of the High Court for sustaining the concurrent findings with respect to the issue whether the suit was barred by limitation.

26. The relief sought for, in suit No.410/2000 would reveal that the first prayer, which is the main prayer, is declaratory in nature. Even according to the plaintiffs, as revealed from the plaint the second prayer (extracted hereinbefore) is only consequential relief. A perusal of the same would undoubtedly show that it is consequential and not an independent one and therefore the courts below are right in holding that the said prayer is grantable only if the first prayer is granted. In this case based on the determination on the preliminary issue of limitation and in accordance with the decision on that preliminary issue the suit was dismissed. As held by the three-judge Bench in the decision in **Nusli Neville Wadia's** case (supra) the provisions under Order XIV Rule 2(1) and Rule 2(2)(b) permit to deal with and dispose of a suit in

A accordance with the decision on the preliminary issue. In the case on hand in view of the nature of the finding on the preliminary issue and the consequential consideration of the suit in terms of Order XIV Rule 2(2)(b) and taking note of the fact that the suit do not survive after such consideration we find no reason to consider the contention of the appellants with reference to Order VII Rule 11 based on the decisions relied on by them and referred hereinbefore. So also, the contentions of the appellants based on Articles 17 and 65 also would pale into insignificance and warrant no consideration at all, in the circumstances.

B

27. The upshot of the above discussion is that there is absolutely no perversity or illegality in the concurrent findings of the courts below warranting interference in invocation of the power under Article 136 of the Constitution of India. In the result, the appeal stands dismissed with costs.

C

28. All pending applications are disposed of.

D

Divya Pandey Appeal dismissed.
(Assisted by : Deepak Panwar, LCRA)