A ABDUL RAHIM & ORS.

V.

SK. ABDUL ZABAR & ORS.

Civil Appeal No. 1573 of 2009

MARCH 6, 2009

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[S.B. SINHA, ASOK KUMAR GANGULY AND R.M. LODHA, JJ.]

Mohammedan Law – Gift – Validity of – Interpretation and/or application of Islamic Law on Gift vis-a-vis handing over C *of possession of the property gifted – Father executing gift deed in favour of son in respect of property – Property had been let out to tenants – Held: In a case of this nature, transfer of constructive possession would sub-serve the requirements of law.*

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Limitation Act, 1963 – Art. 59 – Suit for cancellation of transaction – Not filed within period of three years – Held: The suit was barred by limitation.

Interpretation and/or application of the Islamic Law E **on Gift vis-a-vis handing over of possession of the property gifted was in issue in the present appeal.**

The father of 'R' executed the gift deed in question in favour of 'R' in respect of property. The property had been let out to the tenants. The deed was executed on or about F **21-2-1973. In 1980, Respondent No.1, the elder brother of 'R' filed suit praying for a direction that the said gift deed was illegal, void and inoperative. Two questions arose for consideration before the trial Court, viz. whether the suit filed by respondent no.1 was barred by limitation and** G **whether the donor had handed over the possession of the property in question in favour of 'R'. The trial court dismissed the suit holding that the same was instituted beyond the period of limitation as prescribed by Article**

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59 of the Schedule appended to the Limitation Act, 1963. It furthermore held that as 'R' had been collecting house rent from the tenants for the suit property in his own capacity and not as an agent of his father and also having regard to the order of mutation in his favour, the deed of gift dated 21.2.1973 was valid in law.

Respondent No.1 preferred appeal which was allowed by the High Court inter alia on the ground that there was no material brought on record to show that the donor divested himself of the title of the said property and 'R' was in possession thereof.

In appeal to this Court, it was submitted by the appellants that the High Court committed a manifest error in passing the impugned judgment insofar as it failed to take into consideration that the premises having been let out to the tenants, handing over constructive possession thereof to 'R' sub-served the requirements of law.

Allowing the appeal, the Court

HELD:1.1. A gift becomes complete when a person transfers with immediate effect the ownership of his movable or immovable property to another person, and that other person himself or someone else with his consent takes possession of the property gifted. Under Mohammadan Law it is a contract which takes effect through offer and acceptance. [Para 10] [40-D-E]

1.2. The conditions to make a valid and complete gift under the Mohammadan Law are as under: (a) The donor should be sane and major and must be the owner of the property which he is gifting; (b) The thing gifted should be in existence at the time of hiba; (c) If the thing gifted is divisible, it should be separated and made distinct; (d) The thing gifted should be such property to benefit from which is lawful under the Shariat; (e) The thing gifted should not be accompanied by things not gifted; i.e.

A **should be free from things which have not been gifted; (f) The thing gifted should come in the possession of the donee himself, or of his representative, guardian or executor. [Para 10] [40-E; 41-A]**

B **1.3. It is also well settled that if by reason of a valid gift the thing gifted has gone out of the donee's ownership, the same cannot be revoked. [Para 10] [41-B]**

1.4. The donor may lawfully make a gift of a property in the possession of a lessee or a mortgagee. For C **effecting a valid gift, the delivery of constructive possession of the property to the donee would serve the purpose. Even a gift of a property in possession of trespasser is permissible in law provided the donor either obtains and gives possession of the property to the** D **donee or does all that he can to put it within the power of the donee to obtain possession [Para 10] [41-C]**

Maqbool Alam Khan vs. Mst. Khodaija & ors. (1966) 3 SCR 479 and Mullic Abdool Guffoor vs Muleka ILR (1884) 10 Calcutta 1112 – referred to.

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Mulla's Principles of Mohammadan Law; 'Outlines of Mohammedan Law' by A.A. Faizee; 'Commentary on Mohammedan Law' by Syed Ameer Ali and 'Muslim Law - The Personal Law of Muslims in India and Pakistan' by Faiz Badruddin Tyabji - referred to.

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2. In the present case, the deed of gift is a registered one. It contains a clear and unambiguous declaration of total divestment of property. A registered document carries with it a presumption that it was validly executed. G **It is for the party questioning the genuineness of the transaction to show that in law the transaction was not valid. 'R' had been receiving rent from the tenants. In fact, respondent No.1 in his suit claimed a decree for apportionment of rent. This Court would presume that 'R'** H **had been collecting rent from the tenants during the life**

time of his father. The agency to collect rent, however, A
came to end as soon as an order of mutation was passed in his favour. Apart from that 'R' was allowed to continue to collect rent which having regard to the declaration made in the deed of gift must be held to be on his own behalf and not on behalf of the donor. [Para 14] [44-E-G] B

3. Constructive possession of the suit premises must be held to have been handed over by the donor as he had himself prayed for mutation of R's name in the revenue record. The High Court misconstrued the order of the Revenue Authority. It having failed to take into consideration the import and purport of the donor's application before the Tahasildar, committed a manifest error in holding that the order of mutation on that basis was not decisive. In a case of this nature, thus, the transfer of constructive possession would sub-serve the requirements of D
law. The High Court committed a serious error in opining that the possession had not been handed over to 'R' by the donor. [Paras 15, 17] [44-H; 45-A-B; D-E; 46-D-E] C

Valia Peedikakkan di Katheessa Umma & ors. vs. Pathakkalan Narayanath Kunhamu AIR 1964 SC 275 – relied E
on.

Munni Bai & anr. vs. Abdul Gani AIR (1959) Madhya Pradesh 225 and Abu Khan vs. Moriam Bibi (1974) 40 Cuttack Law Times 1306 – referred to. F

4. 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 G
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. [Para 19] [47-D-E]

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A *Md. Noorul Hoda vs. Bibi Raifunnisa & ors. ([1996) 7 SCC 767 and Sneh Gupta vs. Devi Sarup & Ors.* (2009) 2 SCALE 765 – referred to.

Case Law Reference

B	**(1966) 3 SCR 479**	**referred to**	**Para 12**
	ILR (1884) 10 Calcutta 1112	**referred to**	**Para 12**
	AIR (1959) Madhya Pradesh 225	**referred to**	**Para 16**
C	**(1974) 40 Cuttack Law Times 1306**	**referred to**	**Para 16**
	AIR 1964 SC 275	**relied on**	**Para 16**
D	**(1996) 7 SCC 767**	**referred to**	**Para 19**
	(2009) 2 SCALE 765	**referred to**	**Para 19**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1573 of 2009

E From the Judgement and Order dated 30.06.2008 of the Hon'ble High Court of Orissa, Cuttack in F.A.. No. 197 of 1982.

R.K. Dash, Suchit Mohanty, Anupam Lal Das, for the Appellants.

F Bharat Sangal, Prasenjit Das, Mrinalini Dinam, Vernika Tomar, for the Respondents.

The Judgement of the Court was delivered by

S.B. SINHA, J.

G 1. Leave granted

2. Interpretation and/or application of the Islamic Law on Gift vis-à-vis handing over of possession of the property gifted is the question involved in this appeal. It arises out of a judgment H and order dated 30.6.2008 passed by the High Court of Orissa

at Cuttack in First Appeal No. 197 of 1982 whereby and whereunder the First Appeal filed by the respondent No.1 - plaintiff's has been allowed decreeing the suit.

3. Indisputably, the properties in question belonged to one Haji Sk. Abdullah. He had two sons and four daughters. Respondent No.1 – plaintiff was his elder son; whereas Abdul Razak ('Razak') (since deceased), father of appellants, was the younger son. His daughters were married. He gifted some lands in favour of his daughters in 1960. They in turn relinquished their rights in his properties. He executed a registered deed of gift in favour of Razak on or about 21.2.1973. The property gifted was a house. Adjoining thereby was a small patch of land which belonged to the State. The State had granted a temporary lease in favour of Haji Sk. Abdullah. It was being used for ingress to and egress from the said house. It is also not in dispute that he executed various documents in the year 1975 transferring his properties in favour of respondent No.1, his sons as also the sons of Razak, appellants herein.

The recitals in the said deed of gift dated 21.2.1973 read as under:

> "Description – I, the donor purchased the schedule land from Sk. Abdul Azizi Ahmedi on 14.10.1958 by registered deed No. 11399 and since the date of purchase I have been possessing as owner thereof. Since I have become old, you the donee being my younger son, you along with your wife have been looking after me with utmost care and besides also you both are paying utmost regards to me and so, satisfied with you I decided to gift you the schedule land which is my self-acquired property and being in good health and mind, I am transferring the schedule land valued at rupees four thousand approximately to you by way of gift and executing this deed of gift and having done so. I declare that from to-day onwards you, and your children by succession will enjoy and possess the same and pay rent to Anchal and obtain rent-receipts in your name and

A whenever necessity arises you can transfer the same to which I will have no objection. In case I object, it will not be accepted by any court of law and this deed will remain valid and effective.

Dated 21st February, 1973."

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4. In the year 1975, Haji Sk. Abdullah filed an application before the Tahsildar, Bhadrak for mutation of Razak's name in respect of the suit land in the revenue records marked as Case No. 93 of 1975, stating:

C "I, the present applicant Hazi Seikh Abdullah aged 85 years, s/o Sk. Abdul Gafur, at Sankarpur, Bhadrak, Dt. Balasore, do hereby state that on account of old age I am unable to walk. Being satisfied with the services and help rendered by my son Abdul Razak I have gifted the following lands to D him by a registered gift deed No. 1647 dated 21.2.73 and so, I have no claim over the said properties.

Therefore, name of my son Abdul Razak may be entered in the tenancy ledger in place of my name and rent may be collected from him."

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5. Indisputably, Razak also filed T.L. Case No. 7 of 1976 for grant of temporary lease in respect of the said small patch of Govt. land which along with the suit land formed a compact area. The deed of gift was also produced in the said F proceedings. Respondent No.1 objected to the prayers made by the appellant. By an order dated 6.4.1977, Tahasildar, Bhadrak while holding that the objection raised by the respondent No.1 was without any merit, recommended renewal of the licence in favour of Razak.

G 6. Respondent No. 1 filed a suit being O.S. No. 112 of 1980 on or about 2.9.1980 in the court of Subordinate Judge, Bhadrakh inter alia praying for a declaration that the said deed of gift dated 21.2.1973 was illegal, void and inoperative.

Two issues arose therein for consideration of the learned H

trial judge: (1) Whether the suit was barred by limitation; and (2) Whether Haji Sk. Abdullah had handed over the possession of the properties in question in favour of Razak

Indisputably, during pendency of the suit, Razak died and his legal heirs, appellants herein, were substituted in his place.

The trial court dismissed the suit opining that the cause of action for filing the suit having arisen on 6.4.1977, the suit was instituted beyond the period of limitation as prescribed by Article 59 of the Schedule appended to the Limitation Act, 1963. It was furthermore held that as Razak had been collecting the house rent from the tenants for the suit lands in his own capacity and not as an agent of his father and also having regard to the order of mutation in his favour, the deed of gift dated 21.2.1973 was valid in law.

7. Respondent No. 1 preferred an appeal thereagainst. The High Court allowed the said appeal inter alia holding that as Razak had been realising rent from the tenants even prior to the date of death of his father and as there was no material brought on record to show that Haji Sk. Abdullah had divested himself of the title of the said property and Razak was in possession thereof. The High Court furthermore opined that the respondent No. 1 came to know of the fact of execution of the deed of gift in favour of Razak only in the year 1980.

8. Mr. R.K. Dash, learned Senior Counsel appearing on behalf of the appellants would submit that the High Court committed a manifest error in passing the impugned judgment insofar as it failed to take into consideration that the premises having been let out to the tenants, handing over constructive possession thereof sub-served the requirements of law.

9. Mr. Bharat Sangal, learned counsel appearing on behalf of the respondents, on the other hand, would submit:

i) Respondent No.1 has not been able to prove any overt act on the part of the donor to establish that possession of the premises was in fact delivered to the donee.

A ii) As the rents were being collected from the tenants even prior to the execution of the deed of gift, collection of rent by itself would not establish delivery of possession.

iii) The order of mutation having been passed in respect B of a separate strip of land and being not the subject matter of the deed of gift, the same was not relevant for determination of the issue.

iv) The plaintiff having stated on oath that he had not filed any objection in the said mutation proceedings C and having come to learn about the execution of the deed of gift only in the year 1980, the suit must be held to have been filed within the prescribed period of limitation.

D 10. A gift indisputably becomes complete when a person transfers with immediate effect the ownership of his movable or immovable property to another person, and that other person himself or someone else with his consent takes possession of the property gifted. Under Mohammadan Law it is a contract E which takes effect through offer and acceptance.

The conditions to make a valid and complete gift under the Mohammadan Law are as under :

(a) The donor should be sane and major and must be the owner of the property which he is gifting.

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(b) The thing gifted should be in existence at the time of hiba.

(c) If the thing gifted is divisible, it should be separated and made distinct.

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(d) The thing gifted should be such property to benefit from which is lawful under the Shariat.

(e) The thing gifted should not be accompanied by things not gifted; i.e. should be free from things which have not been gifted.

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(f) The thing gifted should come in the possession of the donee himself, or of his representative, guardian or executor.

It is also well settled that if by reason of a valid gift the thing gifted has gone out of the donee's ownership, the same cannot be revoked.

The donor may lawfully make a gift of a property in the possession of a lessee or a mortgagee. For effecting a valid gift, the delivery of constructive possession of the property to the donee would serve the purpose. Even a gift of a property in possession of trespasser is permissible in law provided the donor either obtains and gives possession of the property to the donee or does all that he can to put it within the power of the donee to obtain possession.

11. We may notice the definition of gift as contained in various text books:

In Mulla's Principles of Mohammadan Law the 'HIBA' is defined as a transfer of property made immediately without any exchange by one person to another and accepted by or on behalf of later.

A.A. Faizee in his 'Outlines of Mohammedan Law' defined 'Gift' in the following terms:

> "A man may lawfully make a gift of his property to another during his lifetime, or he may give it away to someone after his death by will. The first is called a disposition inter vivos; the second a testamentary disposition. Mohammadan Law permits both kinds of transfers, but while a disposition inter-vivos is unfettered as to quantum, a testamentary disposition is limited to one-third of the net estate. Mohammadan Law allows a man to give away the whole of his property during his life time, but only one-third of it can be bequeathed by will."

Syed Ameer Ali in his 'Commentary on Mohammedan Law' has amplified the definition of Hiba in the following terms:

A "In other words the "Hiba" is a voluntary gift without consideration of a property or the substance of a thing by one person to anther so as to constitute the donee, the proprietor of the subject matter of the gift. It requires for its validity three conditions viz., (a) a manifestation of the B wish to give on the part of the Donor (b) the acceptance of the Donee either impliedly or constructively and (c) taking possession of the subject matter of gift by the donee either actually or constructively."

12. In *Maqbool Alam Khan vs. Mst. Khodaija & ors.* C [(1966) 3 SCR 479], it was held:

"The Prophet has said: "A gift is not valid without seisin". The Rule of law is :

"*Gifts are rendered valid by tender, acceptance and* D *seisin.*—Tender and acceptance are necessary because a gift is a contract, and tender and acceptance are requisite in the formation of all contracts; and seisin is necessary in order to establish a right of property in the gift, because a right of property, according to our doctors, E is not established in the thing given merely by means of the contract, without seisin." [See *Hamilton's Hedaya* (Grady's Edn.), p. 482]

Previously, the Rule of law was thought to be so strict that it was said that land in the possession of a usurper (or F wrongdoer) or of a lessee or a mortgagee cannot be given away, see Dorrul Mokhtar, *Book on Gift*, p. 635 cited in *Mullic Abdool Guffoor* v. *Muleka*. But the view now prevails that there can be a valid gift of property in the possession of a lessee or a mortgagee and a gift may be sufficiently G made by delivering constructive possession of the property to the donee. Some authorities still take the view that a property in the possession of a usurper cannot be given away, but this view appears to us to be too rigid. The donor may lawfully make a gift of a property in the H possession of a trespasser. Such a gift is valid, provided

the donor either obtains and gives possession of the property to the donee or does all that he can to put it within the power of the donee to obtain possession."

[See also *Mullic Abdool Guffoor vs. Muleka* [ILR 1884 (10) Calcutta 1112]

13. Faiz Badruddin Tyabji in his 'Muslim Law – The Personal Law of Muslims in India and Pakistan' states the law thus:

"395. (1) The declaration and acceptance of a gift do not transfer the ownership of the subject of gift, until the donor transfers to the donee such seisin or possession as the subject of the gift permits, viz. until the donor (a) puts it within the power of the donee to take possession of the subject of gift, if he so chooses, or (b) does everything that, according to the nature of the property forming the subject of the gift, is necessary to be done for transferring ownership of the property, and rendering the gift complete and binding upon himself.

(2) Imam Malik holds that the right to the subject of gift relates back to the time of the declaration."

Transfer of possession under the Muslim Law is necessary for transferring complete ownership. The learned author states:

"Transfer of possession in hiba is not merely a matter of form, nor something merely supplying evidence of the intention to make a gift. The necessity for the transfer of possession is expressly insisted upon as part of the substantive law, since transfer of possession effectuates that which the gift is intended to bring about, viz. the transfer of the ownership of the property from the donor to the donee. It may be said that transfer of possession is no more a matter of form than the necessity for consideration for the validity of a contract is a matter of form. The law does not ask, Did the donor really intend to give the subject of gift, i.e. did he really intend to transfer the ownership of

A the subject of gift from himself to the donee? What the law asks is, Has the donor actually given away? or Has the ownership been actually transferred from the donor to the donee? In regard to contracts it has been well expressed: "It is often difficult to determine whether what is said
B amounts only to a willingness to treat about a matter, or is an absolute contract; and the adoption of a form removes the difficulty. So that what may have been considered a mere matter of form becomes incorporated in substantive law. What has to be determined is not whether the donor
C had finally resolved to make a gift, but whether he had actually transferred away the property—and even where the transfer is for consideration, possession has, in most systems of law, an important bearing on the rights of the parties and others claiming through them: since (under
D Muslim law) the owner's right ceases on his death, and devolves upon his heirs, it follows that where the owner dies without transferring the property to another, the person to whom a voluntary transfer was intended to be made, has no claim against the heirs."

E 14. Indisputably, the deed of gift is a registered one. It contains a clear and unambiguous declaration of total divestment of property. A registered document carries with it a presumption that it was validly executed. It is for the party questioning the genuineness of the transaction to show that in
F law the transaction was not valid. We have noticed hereinbefore that Razak had been receiving rent from the tenants. In fact, the respondent No. 1 in his suit claimed a decree for apportionment of rent. We would presume that Razak had been collecting rent from the tenants during the life time of his father. The agency to
G collect rent, however, came to end as soon as an order of mutation was passed in his favour. Apart from the fact that the Razak was allowed to continue to collect rent which having regard to the declaration made in the deed of gift must be held to be on his own behalf and not on behalf of the donor.

H 15. Constructive possession of the suit premises must be

held to have been handed over by the donor as he had himself prayed for mutation of Razak's name in the revenue record. The High Court, in our opinion, misconstrued the order of the Revenue Authority. It having failed to take into consideration the import and purport of the donor's application before the Tahasildar committed a manifest error in holding that the order of mutation on that basis was not decisive. Respondent No.1 while examining himself as a witness (P.W.2) furthermore categorically admitted:

> "My father applied in that case for recording the lease hold land in favour of D.1. Despite my objection the D.1 was accepted as lessee in place of my father in 1976. Ext. D-4 is the Vakalatnama I executed in favour of Sri N.C. Mohapatra, Advocate. Ext.D-5 is the petition of adjournment filed in that lease case on my side. I could not follow the proceeding in T.L. 7/76. It is not a fact that I knew about the gift to D.1. from 1976."

In a case of this nature, thus, the transfer of constructive possession would sub-serve the requirements of law.

In *Munni Bai & anr. vs. Abdul Gani* [AIR 1959 Madhya Pradesh 225], it was held:

> "(6) However, delivery of possession can be made in such manner as the subject of the gift is susceptible of : see Sadik Hussain Khan v. Hashim Ali Khan, 43 Ind App 212 at p. 221 : (AIR 1916 PC 27). In a case of gift of the equity of redemption when the mortgage is usufructuary, there can be no delivery of physical possession of the property. In these circumstances, execution of Ex. P-1 by Mst. Dhapli, by which, after making an oral declaration of gift, she recognized the respondent as owner of the house and delivered the document to him in token thereof, is sufficient delivery of possession."

16. A learned single judge of the Orissa High Court in *Abu Khan vs. Moriam Bibi* [1974 (40) Cuttack Law Times 1306] held:

A "....Delivery of possession may be either actual or constructive. 'Possession has been defined in section 394 of the Muslim Law by Tyabji. The definition runs thus:-

"A person is said to be in possession of a thing, or of immovable property, when he is so placed with reference
B to it that he can exercise exclusive control over it, for the purpose of deriving from it such benefit as it is capable of rendering, or as is usually derived from it."

Thus, possession can be shown not only by acts of
C enjoyment of the land itself but also by ascertaining as to in whom the actual control of the thing is to be attributed or the advantages of possession is to be credited, even though some other person is in apparent occupation of the land. In one case, it would be actual possession and in the other case. it would be constructive possession."
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In that case, handing over of the deed of gift coupled with the declaration made in the document was held to be sufficient for constituting a valid gift.

E (See also *Valia Peedikakkandi Katheessa Umma & ors. vs. Pathakkalan Narayanath Kunhamu* [AIR 1964 SC 275]

We agree with the ratio laid down therein.

17. We, therefore, are of the opinion that the High Court committed a serious error in opining that the possession had
F not been handed over to Razak by the donor.

18. Limitation for filing a suit in a case of this nature is governed by Article 59 of the Schedule appended to the Limitation Act, which reads as under:

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	"Description of Suit	Period of Limitation	Time from which period begins to run
59	To cancel or set aside an instrument or decree or for the	Three years	When the facts entitling the plaintiff to have the instrument

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rescission of a contract.	or decree cancelled or set aside or the contract rescinded first become known to him."

Respondent No.1 in his suit prayed for cancellation of and setting aside of the deed of gift dated 21.2.1973. He became aware of the deed of gift in the proceedings before the Tahasildar. He had filed objections on the Razak's application for grant of lease in his name in respect of the small patch of lands which was being used for ingress to and egress from the property in question. In that proceeding itself, the donor himself had prayed for mutation of Razak's name in respect of the property in question.

19. 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.

In *Md. Noorul Hoda vs. Bibi Raifunnisa & ors.* [1996 (7) SCC 767], this Court held:

> "....There is no dispute that Article 59 would apply to set aside the instrument, decree or contract between the inter se parties. The question is whether in case of person claiming title through the party to the decree or instrument or having knowledge of the instrument or decree or contract and seeking to avoid the decree by a specific declaration, whether Article 59 gets attracted? As stated earlier, Article 59 is a general provision. In a suit to set aside or cancel an instrument, a contract or a decree on the ground of fraud, Article 59 is attracted. The starting point of limitation is the date of knowledge of the alleged

A fraud. 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 B 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 C 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 D wide enough to encompass a 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 E three years from the date when the facts entitling the plaintiff to have the decree set aside, first became known to him."

{See also *Sneh Gupta vs. Devi Sarup & Ors.* [2009 (2) SCALE 765]}

F 20. For the reasons aforementioned, the impugned judgment is set aside. The appeal is allowed with costs. Counsel's fee assessed at Rs.25,000/-.

B.B.B. Appeal allowed.