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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

+ **CS(OS) 2046/2015 & I.A. 14119/2015**

MS. NEELU CHADHA

WIFE OF MR SAURABH CHADHA

FLAT NO 505, SECTOR A,

POCKET C, VASANT KUNJ

NEW DELHI-110070

....PLAINTIFF

(Through: Mr. Arpit Sharma, Mr. Anil Sharma, Mr. Anant Sharma and Mr. Aman Sharma, Advs.)

Versus

1. SUNIL SETHI

SON OF LATE JYOTI SWARUP SETHI

C-99, ANAND NIKETAN,

NEW DELHI

2. ANIL SETHI

SON OF LATE JYOTI SWARUP SETHI

C-99, ANAND NIKETAN,

NEW DELHI

3. SUKSHAM SETHI

WIFE OF LATE SH SATISH SETHI

302, RAGHAV RESIDENCY,

ROAD NO. 11, BANJARA HILLS,

HYDERABAD 500034.



4. PUNISH SETHI
SON OF LATE SH SATISH SETHI
302, RAGHAV RESIDENCY,
ROAD NO. 11, BANJARA HILLS,
HYDERABAD 500034.

5. DELHI DEVELOPMENT AUTHORITY
CO-OPERATIVE SOCIETY WING
INA, VIKAS SADAN
NEW DELHI
SERVICE TO BE EFFECTED THROUGH ITS
VICE-CHAIRMAN

6. ANAND NIKETAN CO-OPERATIVE
SOCIETY LTD.,
ANAND NIKETAN,
NEW DELHI-110021
THROUGH ITS SECRETARY
NEW DELHI- 110001

....DEFENDANTS

(Through: Mr. Alok Kumar, Sr. Adv. with Ms. Monisha A. Narain, Mr. Amit Kumar Singh, Mr. Varun Maheshwari and Mr. Manan Soni, Advs. for D-1&2. Ms. Vrinda Kapoor, Ms. Latika Malhotra and Ms. Saumya Soni and Mr. Vishal Vaid, Advs. for D-5)

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Reserved on: 16.12.2025

Pronounced on: 27.01.2026

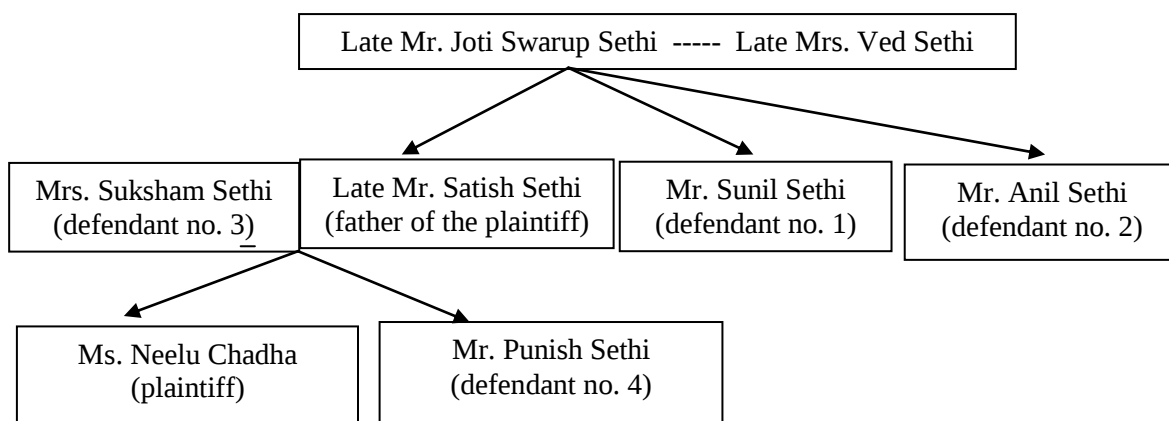
JUDGMENT

The suit is for partition of property bearing No. C-99, Anand Niketan, New Delhi (*hereinafter referred to as the suit property*), originally belonging to late Mr. Joti Swarup Sethi. The plaintiff is his grand-daughter,



defendants no. 1 and 2 are his sons, whereas, defendants no. 3 and 4 are the plaintiff's mother and brother respectively. Defendant no. 5 is Delhi Development Authority and defendant no. 6 is the co-operative society which allotted the suit property in the name of late Mr. Joti Swarup Sethi.

2. The family tree is extracted below, for reference:



3. The case set up by the plaintiff is that the suit property was sub-leased to late Mr. Joti Swarup Sethi by defendant no. 6 in the year 1968. He passed away intestate on 03.08.1972, leaving behind his wife, Mrs. Ved Sethi, defendants no. 1 and 2, and the plaintiff's father, Mr. Satish Sethi. Mr. Satish Sethi passed away on 04.07.1977, leaving behind the plaintiff, and defendants no. 3 and 4. It is alleged that subsequent to her father's death, the plaintiff and defendant no. 4, who were minors at the time, and defendant no. 3 were maltreated by defendants no. 1 and 2 and were forced to leave the suit property.

4. The plaintiff further avers that she was always assured by their relatives that her family would be given its rightful share in the properties of late Mr. Joti Swarup Sethi, and in spite of the same, defendants no. 1 and 2 have refused to do so. The suit property presently stands mutated and



Conveyance Deed dated 16.07.2007 (*hereinafter referred to as the Conveyance Deed*) has been executed after conversion as ‘freehold-property’, in the names of defendants no. 1 and 2. The plaintiff’s case is that she became aware of the same only on 14.08.2014, when the said information was disclosed by defendant no. 5, upon an application by the plaintiff. On a perusal of the documents, the plaintiff realised that there were discrepancies in the manner in which the mutation was carried out and the Conveyance Deed was executed.

5. The plaintiff further claims to have made a representation before defendant no. 5, highlighting the aforesaid alleged discrepancies, but the same was rejected on the ground that defendant no. 5 was not the competent forum to look into the said aspects. The plaintiff, thus, also seeks the reliefs of declaration that the impugned mutation and Conveyance Deed are null and void, and injunction restraining defendants no. 1 and 2 from encumbering the suit property or creating any third-party rights therein.

6. Defendants no. 1 and 2 are the principal contesting defendants. In their written statement, it is pleaded that late Mr. Joti Swarup Sethi owned a commercial property bearing No. 2, at Sewa Nagar, New Delhi (*hereinafter referred to as the commercial property*) besides, the suit property. Subsequent to his death, on 23.09.1978, the said properties were orally partitioned and while the suit property fell in the share of defendants no. 1 and 2 and their mother, the commercial property fell in the share of the plaintiff and defendants no. 3 and 4. They had also paid a sum of Rs. 10,000/-(Rupees Ten Thousand only) each, to the plaintiff and defendants no. 3 and 4. Further, defendant no. 3 on behalf of the plaintiff, defendant no. 4 and herself, had executed Release Deed dated 23.09.1978, relinquishing



all their rights in the suit property, whereas, Mrs. Ved Sethi, and defendants no. 1 and 2 had executed Release Deed dated 14.12.1978 (*hereinafter both release deeds shall be collectively referred to as the release deeds*) relinquishing their rights in the commercial property. The commercial property was even mutated in the name of defendant no. 3, who later sold the same to one Mr. Amrik Lal Budhreja *vide* registered Sale Deed dated 23.11.1979.

7. Defendants No. 3 and 4 support the case of the plaintiff, whereas, defendant no. 5, in its written statement has pleaded that the mutation entries for the suit properties were effected on the basis of the requisite documents and that there was no connivance on the part of its officers with defendants no. 1 and 2.

8. The plaintiff has produced the following documents, and examined the following witnesses in support of her case:

Documents

Sr. No.	Document No.	Description
1.	Exhibit P-1	Copy of lease deed dated 11.06.1968
2.	Exhibit P-2	Copy of affidavit dated 19.04.1968
3.	Unnumbered	Copy of DDA letters dated 11.06.1968, 12.08.11, 20.08.1972
4.	Exhibit P-6	Copy of letter dated 16.09.1972
5.	Exhibit P-7	Copy of DDA letters dated. 22.11.1972



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	Exhibit P-8	Copy of DDA letters dated 05.12.1972, 08.12.1972
9	Exhibit P-10	Copy of death certificate of J.S. Sethi.
1	Exhibit P-12	Copy of DDA letters dated, 25.07.1973, 21.09.1974, 28.07.1975 07.02.1976, 25.6.1976
9.	Exhibit P-14	Letter dated 07.02.1976 from defendant no. 6 to defendant no. 5
10.	Unnumbered	Copy of letter dated 08.11.76 and 13.12.1976
11.	Exhibit P-18	Copy of death certificate of S.K.Sethi
12.	Unnumbered	Copy of letter dated 09.01.2007
13.	Exhibit P-21	Copy of death certificate of Ved Kumari Sethi
14.	Unnumbered	Copy of affidavits, undertakings indemnity bonds all dated 9.1.2007
15.	Exhibit P-32	Copy of letter dated 11.01.2007
16.	Exhibit P-33	Copy of letter dated 19.04.2007
17.	Exhibit P-34	Copy of letters dated 26.04.2007, 04.06.2007 and 10.07.2007
18.	Exhibit P-36	Copy of Conveyance Deed dated 16.07.2007
19.	Unnumbered	Copy of letter dated 14.08.2014 by defendant no. 6 to the plaintiff.

Witness



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Sr. No.	Witness no.	Particulars
1.	PW-1	Ms. Neelu Chadha, the plaintiff

9. The defendants have produced the following documents and witnesses in support of their case:

Documents

Sr. No.	Document No.	Description
1.	Exhibit D-1	Original share certificate dated 15.07.1965 in favour of Mr. Joti Swarup Sethi
8.	Exhibit DW3/1, Exhibit DW3/2 and Exhibit DW3/3-	Exhibit DW3/1, Exhibit DW3/2 and Exhibit DW3/3- Original receipts dated 23.09.1978 signed by defendant no. 3.
9.	Exhibit DW3/4	Original receipt dated 23.09.1978 signed by defendant no. 3.
10.	Exhibit PW1/DX1	Legal notice dated 15.05.2014 by the plaintiff to defendants no. 1 and 2.
11.	Exhibit PW1/DX2	Legal notice dated 15.05.2014 by the plaintiff to defendants no. 1 and 2.



12.	Exhibit PW1/DX2	Application dated 28.05.2014 filed by the plaintiff before defendant no. 5
13.	Exhibit PW1/DX3	Reply dated 08.07.2014 by defendant no. 5 to the plaintiff's application.
14.	Exhibit PW1/DX4	Letter dated 22.07.2014 by the plaintiff to defendant no. 5.
15.	Exhibit PW1/DX5	Representation dated 29.07.2014 by the plaintiff to defendant no. 5.
16.	Exhibit D5W-1/X1	Letter dated 24.07.1973 by defendant no. 5 to defendant no. 6.
17.	Exhibit D5W1/1 (Colly)	Show-Cause Notice dated 13.10.2014 issued by defendant no. 5 to defendants no. 1 and 2
18.	Mark A	Reply dated 14.08.2014 by defendant no. 5 to the plaintiff.
19.	Mark B	Reply dated 09.12.2014 by defendant no. 5 to the plaintiff's representation.



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Witnesses

Sr. No.	Witness No.	Particulars
1.	DW-1	Mr. Anil Sethi, defendant no. 2
2.	D2W-2	Mr. S.P. Gulati one of the attesting witnesses to Will dated 14.04.1980 executed by Mrs. Ved Sethi.
3.	DW-3	Mr. Pramjit Singh Wason- Son of Mr. Baldev Singh Wason, one of the signatories to the receipts dated 23.09.1978.
4.	DW-4	Mr. Rakesh, Record Keeper, Sub-Registrar-III, New Delhi.
5.	DW-5	Ms. Preeti, Manager, Central Bank of India
6.	DW-6	Mr. Sanjay Kumar, Section Officer, Land and Estate Department, South MCD.
7.	DW-7	Mr. Ajay Singh, Record-incharge, Department of Delhi Archives
8.	DW-8	Mr. Daya Shankar, Clerk at defendant no. 6.
9.	D5W-1	Mr. Budhram, Dy. Director (CS), at defendant no. 5.

10. The issues for consideration as framed *vide* order of the Court dated 30.03.2016 are as follows:



1. Whether the suit is barred by limitation? OPD 1-2
2. Whether defendant Nos. 1 & 2 are exclusive owners of the suit property? OPD 1-2
3. In alternative, whether the defendant Nos. 1 & 2 have become owner of the suit property by virtue of adverse possession? OPD 1-2
4. Whether the suit is filed without cause of action? OPD 1-2
5. Whether the plaintiff has not paid proper court fees on the plaint? If so, its effect OPD 1-2
6. Whether the plaintiff and defendant Nos.3 & 4 have a share in the suit property? OPP
7. Whether the plaintiff is entitled for a decree of partition in the suit property? OPP
8. Whether the plaintiff is entitled for decree, of declaration, as prayed? OPP
9. Relief.

Submissions

11. Mr. Arpit Sharma, learned counsel for the plaintiff submits that the plaintiff, being the grand-daughter of late Mr. Joti Swarup Sethi through one of his sons, is entitled to a share in the properties left behind by her grandfather.

12. He submits that the theory of oral family arrangement propounded by defendants no. 1 and 2 is false and baseless. It is pointed out from the cross-examination of DW-1, Mr. Anil Sethi that he has admitted that neither was the leave of the Court for dealing with minors' shares obtained, nor was any



memorandum of family settlement produced before any authority. Placing reliance on Section 8 of the Hindu Minority and Guardianship Act, 1956 (*hereinafter referred to as the HMGA*), he contends that the purported oral family arrangement in the year 1978 cannot bind the plaintiff and defendant no. 4 as they were minors at that time. The decision of the Supreme Court in ***Vishwambhar and Others v. Lakshminarayan and Another***,¹ is relied on in support of the said contention.

13. He further submits that Release Deed dated 12.12.1978 was not executed in favour of the plaintiff or defendant no. 4. The same is not indicative of an oral family arrangement. Reliance is placed on the decision of the Supreme Court in the case of ***Yellappu Uma Maheshwari and Another v. Buddha Jagadeeshwara Rao and Others***,² to assert that unregistered partition deeds or documents effecting relinquishment of rights in immovable properties cannot be appreciated as evidence under Section 49 of the Registration Act, 1908 (*hereinafter referred to as the Registration Act*). Therefore, according to him, the defendants have failed to prove that the suit property was the subject matter of any family arrangement between the parties and the plaintiff and defendants no. 3 and 4 are entitled to the share of Mr. Satish Sethi, in the suit property.

14. With respect to the grievance relating to the mutation entries for the suit property, he submits that the entry in the name of Mrs. Ved Sethi, in the year 1973 was illegal as she was merely a nominee of Mr. Joti Swarup Sethi and not the absolute owner of the suit property. Reliance is placed on the

¹ (2001) 6 SCC 163

² (2015) 6 SCC 787



decision of the Supreme Court in *Nagappanv. Ammasai Gounder*,³ to assert that the role of a nominee is to distribute the property amongst the rightful legal heirs, without conferment of any title on the nominee. It is pointed out from the cross-examination of DW-1 that he has admitted to the factum of not having produced before defendant no. 5, any document executed by Mr. Satish Sethi, relinquishing his share in the suit property prior to the mutation. It is further pointed out from the cross-examination of D5W-1, Mr. Budhram, Deputy Director, DDA (CS) that when asked whether Mrs. Ved Sethi had produced any document indicating no-objection from the other legal heirs of Mr. Joti Swarup Sethi, he answered that no mutation was ever effected in her name, but only the membership of the defendant no. 6 society was transferred to her name. He submits that the mutation in the names of defendants no. 1 and 2 was also without any legal basis, as the purported Will *vide* which Mrs. Ved Sethi bequeathed the suit property to the former, and on the basis of which the said mutation was effected, was not found in the records of defendant no.5. Therefore, according to him, the mutation of the suit properties in the names of Mrs. Ved Kumari and defendants no. 1 and 2 are illegal and the same has to be reverted to the name of Mr. Joti Swarup Sethi.

15. Mr. Alok Kumar, learned senior counsel for defendants no. 1 and 2, submits that the suit is barred by limitation. He submits that the limitation period for filing a suit for setting aside transfer of property made by the guardian of a ward, as provided for under Article 60 in the Schedule to the Limitation Act, 1963 (*hereinafter referred to as the Limitation Act*), is three years from the date when the ward attains majority. The plaintiff, he

³ (2004) 13 SCC 480



submits, attained majority in the year 1993, and therefore, the present suit ought to have been filed within three years therefrom. Reliance is placed on the decisions of the Supreme Court in the cases of *Murugan Vs. Kesava Gounder*,⁴ and *Narayan Vs Babasaheb*,⁵ in this regard. Further, it is highlighted that although the plaintiff claims to have become aware of the impugned mutation and execution of the Conveyance Deed in favour of defendants no. 1 and 2 only upon receiving the requisite documents from defendant no. 5, but she has expressly referred to the same in her representation prior to receiving the documents. The said inconsistency, according to him, is indicative of the factum of her knowledge of the same since inception.

16. He submits that defendants no. 1 and 2 have duly established their lawful title over the suit property. Late Joti Swarup Seth was possessed of the suit property along with the commercial property, which was orally partitioned between Mrs. Ved Kumari, defendants no. 1 and 2 on one side and defendant no. 3, who represented the plaintiff and defendant no. 4 along with herself. The suit property was allotted to the share of Mrs. Ved Kumari and defendants no. 1 and 2, whereas, the commercial property was allotted to the plaintiff and her family. The plaintiff and her family were also paid a sum of Rs. 10,000/- (Rupees Ten Thousand only) each to the legal heirs of late Mr. Satish Sethi.

17. He submits that the factum of the oral partition is established on the basis of the release deeds executed by both the sides, and the conduct of defendant no. 3, who got the property allotted to the share of the plaintiff

⁴2019 INSC 259

⁵2016 (6) SCC 725



and her family mutated in her own name and later sold the same to a third-party.

18. He further submits that Mrs. Ved Sethi had also bequeathed her share in the suit property to defendants no. 1 and 2 *vide* Will dated 14.04.1980 and the same has duly been proved by D2W-2, Mr. S.P. Gulati, one of the attesting witnesses. Therefore, according to him, the title of defendants no. 1 and 2 over the suit property has been established, and the suit is without any cause of action.

19. Learned senior counsel submits that Mrs. Ved Sethi and defendants no. 1 and 2 have been in exclusive possession of the suit property and have exercised all rights as its owner, and by virtue of the said fact as well, the title of defendants no. 1 and 2 would have become perfected by way of adverse possession.

20. Finally, he submits that the plaintiff has not filed the required *ad-valorem* Court fees for the relief of partition, despite her own stance being that after her father's death, she was thrown out of the suit property along with defendant no. 3 and 4. Therefore, according to him, having claimed complete ouster from the suit property, the plaintiff cannot claim constructive possession through defendants no. 1 and 2 and avoid payment of *ad-valorem* Court fees.

Analysis.

Issue No. 1 and Issue No. 8

21. Issue No. 1 pertains to the bar of limitation, and the onus to prove the same lies upon defendants no. 1 and 2, Issue No. 8 pertains to the prayer for declaration and the onus of proof of the same lies on the plaintiff. However,



due to the overlapping nature of submissions advanced thereon, both the issues are taken up together, for, the stand of defendants no. 1 and 2 is that the prayer for declaration is barred by limitation and therefore, cannot be granted.

22. It is the case of defendants no. 1 and 2 that the plaintiff had knowledge of the impugned mutation and documents since inception, and has falsely claimed that she only became aware of the same upon receipt of documents marked as Mark-A from defendant no. 5. Attention of the Court is drawn to Exhibit PW-1/DX5, being the representation dated 29.07.2014 filed by the plaintiff before defendant no. 5, wherein, the plaintiff has sought revocation of the impugned mutation in the names of defendants no. 1 and 2. There is a clear contradiction between the averments in the plaint and Exhibit PW-1/DX5. A comparative examination of the two, reveals that the plaintiff's claims on this issue have been deconstructed by documentary evidence adduced by herself. The relevant portions of the said document are reproduced below, for reference:

“That to my astonishment and surprise my uncle namely Sh Sunil Sethi & Anil Sethi in connivance with few officials of Delhi Development Authority by forging and abridged documents secured the mutation in favour of the mother namely Smt Ved Kumari Sethi and then setting up an Old and false Will secured mutation in their favour.

XXXX

That my uncles namely Sh Sunil Sethi & Anil Sethi set up a forged and fabricated Will claiming it to be Registered Will of April 1980 registered Document which is not available in the records of the Registrar as per the own certificate of the Sub-Registrar which makes it more suspicious as the records are claimed to have been lost or, misplaced. The intention was to oust me of my genuine claim in the property by setting up after complete homework as which records will not be available for perusal once the fraud is unearthed. That the alleged Will has been so cleverly drafted setting up the demise of my father and Release Deed having been given by my mother as heir of



Late Sh Satish Kumar Sethi on 23 September 1978. That my mother had executed any Release Deed nor had visited the Sub-Registrar office in this regard. It is well established to give up nay right in an immovable property has to by means of Registered Deed. That even otherwise Smt Suksham Sethi in law was not entitled to execute any document on behalf of the minors namely Punish Sethi & Neelam Sethi (my Self) without the leave of the court or to protect the interest of the Minor.”

(Emphasis supplied)

23. A perusal of the same clearly indicates that the plaintiff had knowledge of the impugned mutation prior to 14.08.2014, i.e., the claimed date. The representation is couched in a language which reflects ample certainty of facts and preceding events on the part of the plaintiff and therefore, the submission that she gathered knowledge only after receiving the documents, stands countered by her own document/representation. It is important to note that the plaint does not contain any other averment indicating any other time when the plaintiff may have become aware of the impugned mutation. In this factual backdrop, the bar of limitation assumes importance.

24. Article 58 of the Schedule to the Limitation Act governs the limitation period for suits for declaration, and as such, the same governs the instant prayer. The limitation period prescribed therein is of three years commencing from the date on which the right to sue first accrued in favour of the plaintiff. The plaintiff herein, seeking that the impugned mutation and Conveyance Deed be declared as null and void, should have established that the suit has been filed within three years from the date when she first gained knowledge of the said documents/acts. The evidentiary burden on the issue of limitation has been discharged by defendants no. 1 and 2 by highlighting from the plaintiff's own representation that the alleged date of knowledge is



contrary to record. In such scenario, the onus of proof on this issue shifted on the plaintiff to show otherwise.

25. In order to displace the inference drawn from the face of the material highlighted by defendants no. 1 and 2, it was incumbent on the plaintiff to specifically plead as to when she became aware of the same so as to enable the Court to ascertain whether or not the prayer is within the limitation period. Reference can be made to the decision of the Supreme Court in **R. Nagaraj (Dead) Through LRs and Another v. Rajamani and Others**.⁶ in this regard. Furthermore, the only averment in the plaint in this regard is not supported by any evidence. Therefore, the onus of proving that the prayer for declaration is within the limitation period has not been discharged by the plaintiff. Consequently, the aforesaid prayer is held to be barred by limitation.

26. The prayer for partition of the suit property however, is not barred by limitation. The reliance placed on Article 60 of the Schedule to the Limitation Act by Mr. Alok Kumar seems to be misplaced. Article 60 governs the limitation period for suits challenging alienation of minors' property by the guardian. The plaintiff has not sought setting aside of the purported oral partition effected on her behalf by defendant no. 3, but has only prayed for partition of the suit property. In fact, the factum of oral partition/family arrangement has been denied by the plaintiff, and thus, there is no question of seeking its setting aside. Notably, no limitation period has been prescribed under the Limitation Act for filing a suit for partition. This view is in line with the decision of the Supreme Court in **Vidya Devi alias**

⁶ 2025 INSC 478



Vidya Vati (dead) by LRs v. Prem Prakash and Others,⁷ wherein it has been held that seeking partitioning of joint properties is the prerogative of the co-sharers, and there cannot be any limitation period for exercising the said prerogative. The relevant portion of the said decision is extracted below, for reference:

“The legislature has not prescribed any period of limitation for filing a suit for partition because partition is an incident attached to the property and there is always a running cause of action for seeking partition by one of the co-sharers if and when he decides not to keep his share joint with other co-sharers. Since the filing of the suit is wholly dependent upon the will of the co-sharer, the period of limitation, specially the date or time from which such period would commence, could not have been possibly provided for by the legislature and, therefore, in this Act also a period of limitation, so far as suits for partition are concerned, has not been prescribed.”

27. Therefore, Issue No. 1 is answered in the affirmative as far as the prayer for declaration is concerned, and in the negative with respect to the prayer for partition. In view of the finding on Issue No. 1, Issue No. 8 is answered in the negative, as the prayer for declaration is barred.

Issues No. 4, 5, 6, and 7.

28. Issues 4, 5, 6, and 7 are interconnected and are therefore, adjudicated together.

29. The defendants have opposed the prayer for partition on the ground that the properties of Mr. Joti Swarup Sethi were orally partitioned amongst the legal heirs and have relied on Exhibit DW1/9, Exhibit DW-1/12, Exhibit DW-3/1, Exhibit DW-3/2, Exhibit DW-3/3, Exhibit DW-3/4, and Exhibit DW-3/5 in support of the same. Exhibit DW-1/9 and Exhibit DW-1/12 are

⁷ 1995 SCC (4) 496



the release deeds; Exhibit DW-1/9, being executed by Mrs. Ved Sethi and defendants no. 1 and 2, and Exhibit DW-1/12 being executed by defendant no. 3. Exhibit DW-3/1, Exhibit DW-3/2, and Exhibit DW-3/3 are receipts acknowledging the payment of Rs. 30,000 (Rupees Thirty Thousand only) by Mrs. Ved Sethi and defendants no. 1 and 2 to defendant no. 3. Exhibit DW-3/5 is a document purportedly signed by one of the signatories to Exhibit SW-3/1, Exhibit DW-3/2, and Exhibit DW-3/3.

30. It has been contended on behalf of the plaintiff that Exhibit DW-1/12, being an unregistered document by which rights in the suit property were purportedly relinquished, is compulsorily registerable and hence, cannot be admitted in evidence, in view of the bar under Section 49 of the Registration Act. However, the proviso to Section 49 clearly provides that unregistered documents which are compulsorily registerable may be received as evidence of any collateral transaction not required to be effected by registered instrument. Even in ***Yellappu Uma Maheshwari*** (supra), which is relied upon by Mr. Arpit Sharma, the Supreme Court has taken note of the proviso to Section 49 and in fact, has held that certain unregistered relinquishment deeds therein were admissible in evidence for collateral purposes. Exhibit DW-1/12 is being relied upon by the defendants not to prove the relinquishment by defendant no. 3, but to prove an oral partition, which does not require any registered instrument to be effected and is a collateral transaction not founded on the relinquishment effected *vide* the document. Therefore, the said document may be appreciated as evidence of the oral partition.

31. Exhibit DW-3/5 is neither an original document nor a certified copy, and the plaintiff had objected to its exhibiting on 22.02.2022. It was



incumbent on the defendants to produce the original document or a certified copy thereafter, to overcome the objection. However, they have failed to so, and therefore, the said document cannot be appreciated as evidence as per the provision contained in Section 65 of the Evidence Act, 1872 (*hereinafter referred to as the Evidence Act*). The other documents noted above being, originals/certified copies may be received as evidence under Sections 64 and 65 of the Evidence Act.

32. Insofar as Exhibit DW-1/9 is concerned, it is not a unilateral document, and purportedly, it bears the signature of defendant no. 3 as well. It is important to note that the signature on Exhibit DW-1/9 has not been denied either by defendant no. 3 or by the plaintiff. While the plaintiff has only objected to the mode of proof of the said document, defendant no. 3 did not step into the witness box in support of her case. Considering that the plaintiff, as per her own case, was not present at the time of execution of the said document, and therefore, denial, if any, of the same ought to have come from defendant no. 3. Therefore, the signature, purportedly, of defendant no. 3 on the said document is deemed to have been admitted. A perusal of the signatures purportedly of defendant no. 3 in Exhibit DW-3/1, Exhibit DW3/2, Exhibit DW3/3, and Exhibit DW3/4 and a comparison of the same with the signature in exhibit DW-1/9 indicates that the signatures are affixed by the same person, being defendant no. 3.

33. The aforementioned documents clearly indicate that there existed some family arrangement between defendant no. 3 who represented the plaintiff and defendant no. 4 along with herself on one side and Mrs. Ved Kumari and defendants no. 1 and 2 on the other and the suit property appears to have



been allotted to the share of defendants no. 1 and 2 therein in furtherance of the same.

34. The argument advanced on behalf of the plaintiff that any partition, without the permission of the Court as per Section 8 of the HMGA, extinguishing her rights in the suit property in the year 1978 when she was a minor would not be binding on her, cannot be accepted. Section 8 of the HMGA does not contemplate transactions lacking permission of the Court as mandated thereunder to be void. The relevant portion of the aforesaid provision is reproduced below for reference:

8. Powers of natural guardian.—(1) The natural guardian of a Hindu minor has power, subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realization, protection or benefit of the minor's estate; but the guardian can in no case bind the minor by a personal covenant.

(2) The natural guardian shall not, without the previous permission of the court,— (a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor; or (b) lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority.

(3) Any disposal of immovable property by a natural guardian, in contravention of sub-section (1) or sub-section (2), is voidable at the instance of the minor or any person claiming under him.

(Emphasis supplied)

35. Sub-section (3), thereof, clearly provides that transactions in contravention of sub-sections (1) or (2) are only voidable and not void. In **Vishwambhar** (supra), the Supreme Court has held that the aforesaid voidable transaction has to be set aside in order to be avoided for the purposes of sub-section (3). The relevant portion of the decision is reproduced below, for reference:

“On a fair reading of the plaint, it is clear that the main fulcrum on



which the case of the plaintiffs was balanced was that the alienations made by their mother-guardian Laxmibai were void and therefore, liable to be ignored since they were not supported by legal necessity and without permission of the competent court. On that basis the claim was made that the alienations did not affect the interest of the plaintiffs in the suit property. The prayers in the plaint were inter alia to set aside the sale deeds dated 14.11.1967 and 24.10.1974, recover possession of the properties sold from the respective purchasers, partition of the properties carving out separate possession of the share from the suit properties of the plaintiffs and deliver the same to them. As noted earlier, the trial court as well as the first appellate court accepted the case of the plaintiffs that the alienations in dispute were not supported by legal necessity. They also held that no prior permission of the court was taken for the said alienations. The question is in such circumstances are the alienations void or voidable? In Section 8(2) of the Hindu Minority and Guardianship Act, 1956, it is laid down, inter alia, that the natural guardian shall not, without previous permission of the Court, transfer by sale any part of the immovable property of the minor. In sub-section (3) of the said section it is specifically provided that any disposal of immovable property by a natural guardian, in contravention of sub-section (2) is voidable at the instance of the minor or any person claiming under him. There is, therefore, little scope for doubt that the alienations made by Laxmibai which are under challenge in the suit were voidable at the instance of the plaintiffs and the plaintiffs were required to get the alienations set aside if they wanted to avoid the transfers and regain the properties from the purchasers."

(Emphasis supplied)

36. Therefore, the proper recourse that the plaintiff ought to have taken to avoid the oral partition was to have it declared as void in accordance with law. There is a sound juristic distinction between void instruments/transactions and voidable instruments/transactions. A voidable instrument/transaction continues to be valid till the time it is avoided. In order to avoid the same, the plaintiff ought to have acted within the limitation period. However, she has clearly failed to do so.

37. As per the case record, the plaintiff attained majority in the year 1993. Therefore, the three-years' limitation period under Article 60 would end in



the year 1996. However, the suit has been filed only in the year 2014, around twenty-one years after the plaintiff attained majority and eighteen years after the limitation period under Article 60 would have ended. Therefore, even if a prayer for setting aside the prior partition is deemed to be inherent in the prayer for partitioning the suit property, the former is barred by limitation. Accordingly, the objection under Section 8 of the HMGA to the oral partition/family arrangement is meritless.

38. In view thereof, the oral partition of the properties of late Mr. Joti Swarup Sethi in the year 1984 having been duly proved by defendants no. 1 and 2, the plaintiff is, essentially, seeking a share in a property in which she has no right or title. On one hand, there is cogent documentary evidence with admitted signatures of defendant no. 3 to find in favour of the oral partition. On the other hand, to counter the same and indicate jointness of the suit property, the plaintiff has not adduced any credible evidence. In the absence of proof of jointness, there is no question of partition of the suit property. Consequently, the prayer for partition is without any cause of action.

39. Before parting, there is another fact which needs to be appreciated, Defendants no. 1 and 2 have categorically averred that consequent to the oral partition, the commercial property was allotted to the share of the plaintiff and defendants no. 3 and 4, which was sold by defendant no. 3 to third-parties. This assertion has not been denied, and therefore, the inference that can be drawn is that defendant no. 3, representing the plaintiff and defendant no. 4, had acted in furtherance of the oral partition/family settlement to her advantage by selling of their share. Their conspicuous



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silence on this aspect actually raises a question regarding the *bona fide* nature of the present claim.

40. In view of the above discussion, Issue No. 4 is answered in the affirmative, and Issues No. 6 and 7 are answered in the negative. Considering the findings on Issues No. 4 and 7, Issue No. 5 does not require to be adjudicated.

Issues No. 2 and 3.

41. Considering that defendants no. 1 and 2 have not prayed for declaration of their title to the suit property and that the plaintiff has been found not to be entitled for the reliefs prayed, Issues No. 2 and 3 do not require to be adjudicated.

42. In view of the findings and discussion in the preceding paragraphs, the suit is without merit and is, accordingly, dismissed along with pending applications. No order as to costs. Let a decree of dismissal be drawn accordingly.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

27 JANUARY, 2026

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