



2026:CGHC:262

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Judgment Reserved on : 05/12/2025

Judgment Pronounced on : 05/01/2026

FA No. 33 of 1993

**1 - (Deleted) Madhav Saw (Died) Through Lrs. As Per Honble Court Order
Dated 11-07-2024**

1.1 - Rampyari Tamrakar Wd/o. Late Shri Madhow Sao Tamrakar Aged About 65 Years R/o. Village - Pandariya Gandai, Tehsil - Khairagarh, District - Rajanandgaon (C.G.)

1.2 - Anil Tamrakar S/o. Madhow Sao Tamrakar Aged About 48 Years R/o. Village - Pandariya Gandai, Tehsil - Khairagarh, District - Rajanandgaon (C.G.)

1.3 - Sunil Tamrakar (Died) Through Lrs Nill

1.3.1 - (A) Divya Tamrakar W/o. Sunil Tamrakar Aged About 40 Years R/o. Village - Pandariya Gandai, Tehsil - Khairagarh, District - Rajanandgaon (C.G.)

1.3.2 - (B) Kumari Bhumika D/o. Sunil Tamrakar Aged About 16 Years R/o. Village - Pandariya Gandai, Tehsil - Khairagarh, District - Rajanandgaon (C.G.) - Through Her Natural Guardian Appellant 3 (A) (Mother)

1.3.3 - (C) Suryansh Tamrakar S/o. Sunil Tamrakar Aged About 12 Years R/o. Village - Pandariya Gandai, Tehsil - Khairagarh, District - Rajanandgaon (C.G.) - Through His Natural Guardian Appellant 3 (A) (Mother)

1.3.4 - (D) Dudhransh S/o. Sunil Tamrakar Aged About 10 Years R/o. Village - Pandariya Gandai, Tehsil - Khairagarh, District - Rajanandgaon (C.G.) - Through His Natural Guardian Appellant 3 (A) (Mother)

1.4 - Vinod Tamrakar S/o. Madhow Tamrakar Aged About 42 Years R/o. Village - Pandariya Gandai, Tehsil - Khairagarh, District - Rajanandgaon (C.G.)

1.5 - Jitesh Tamrakar S/o. Madhow Tamrakar Aged About 38 Years R/o. Village - Pandariya Gandai, Tehsil - Khairagarh, District - Rajanandgaon (C.G.)

1.6 - Shailesh Tamrakar S/o. Madhow Tamrakar Aged About 36 Years R/o. Village - Pandariya Gandai, Tehsil - Khairagarh, District - Rajanandgaon (C.G.)

1.7 - Praveen Tamrakar S/o. Madhow Tamrakar Aged About 34 Years R/o. Village - Pandariya Gandai, Tehsil - Khairagarh, District - Rajanandgaon (C.G.)

1.8 - Rampal Tamrakar (Died) Through Lrs. (As Per Honble Court Order Dated 12-12-2024)

1.8.1 - (A) Rashmi Tamrakar Wd/o Late Shri Rampal Tamrakar Aged About 54 Years R/o Ward No. 6 Gandai, Post Office Gandai, Pandariya, District Khairagarh Chhuikhadan Gandai, Chhattisgarh.

1.8.2 - (B) Kumari Disha Tamrakar D/o Late Shri Rampal Tamrakar Aged About 17 Years R/o Ward No. 6 Gandai, Post Office Gandai, Pandariya, District Khairagarh Chhuikhadan Gandai, Chhattisgarh.

1.8.3 - (C) Abhyav Tamrakar S/o Late Shri Rampal Tamrakar Aged About 13 Years R/o Ward No. 6 Gandai, Post Office Gandai, Pandariya, District Khairagarh Chhuikhadan Gandai, Chhattisgarh.

1.9 - Shyampal Tamrakar S/o. Madhow Tamrakar Aged About 30 Years R/o. Village - Pandariya Gandai, Tehsil - Khairagarh, District - Rajanandgaon (C.G.)

... Appellants

Versus

1 - (Deleted) Rambha Devi As Per Honble Court Order Dated 11-07-2024

2 - Padmraj S/o Umed Sao Aged About 27 Years R/o Village Gandai, Tahsil Khairagarh, District Rajnandgaon (C.G.)

3 - Dharmraj S/o Umed Sao Aged About 25 Years R/o Village Gandai, Tahsil Khairagarh, District Rajnandgaon (C.G.)

4 - Dhanraj S/o Umed Sao Aged About 21 Years R/o Village Gandai, Tahsil Khairagarh, District Rajnandgaon (C.G.)

5 - Pukraj S/o Umed Sao Aged About 18 Years R/o Village Gandai, Tahsil Khairagarh, District Rajnandgaon (C.G.)

6 - Annraj S/o Umed Sao Aged About 21 Years R/o Village Gandai, Tahsil Khairagarh, District Rajnandgaon (C.G.)

7 - Ram Dulari Bai D/o Umed Sao Aged About 25 Years R/o Village Gandai, Tahsil Khairagarh, District Rajnandgaon (C.G.)

8 - Kumud Bai D/o Umed Sao Aged About 23 Years R/o Village Gandai, Tahsil Khairagarh, District Rajnandgaon (C.G.)

9 - Ketki Bai W/o Dr. Swasth Lal Tamrakar Aged About 30 Years Tamarapara, Durg (C.G.)

10 - Beni Bai (Died) Through Lrs As Per Honble Court Order Dated 11-07-2024

10.1 - (A) Prabhat Kumar Tamrakar S/o. Kamta Prasad Tamrakar Aged About 30 Years R/o. Near Jain Mandir, Durg (C.G.)

10.2 - (B) Alok Tamrakar S/o. Kamta Prasad Tamrakar Aged About 26 Years R/o. Near Jain Mandir, Durg (C.G.)

10.3 - (C) Arvind Tamrakar S/o. Kamta Prasad Tamrakar Aged About 24 Years R/o. Near Jain Mandir, Durg (C.G.)

11 - Santoo Sao (Died) Through Lrs As Per Honble Court Order Dated 19-08-2025.

11.1 - Smt. Lata Devi Tamrakar W/o Late Shri Santo Sao Aged About 70 Years Village- Tamer, Nawagaon, Post- Salhewara, Tehsil- Salhewara, District Khairagarh Chhuikhadan Gandai, C.G.

11.2 - Rajkumar Tamrakar S/o Late Shri Santu Sao Aged About 45 Years Village- Tamer, Nawagaon, Post- Tamer, Nawagaon, Post- Salhewara, Tehsil- Salhewara, District Khairagarh Chhuikhadan Gandai, C.G.

11.3 - Smt. Pushpadevi (Died) Through L.R. Priya Mandavi D/o Jairam Mandavi Aged About 21 Years R/o Ward No. 06, Gandai, District Khairagarh Chhuikhadan Gandai, C.G.

11.4 - Jitesh Tamrakar S/o Late Shri Santu Sao Aged About 38 Years Village- Tamer, Nawagaon, Post- Salhewara, Tehsil- Salhewara, District Khairagarh Chhuikhadan Gandai, C.G.

11.5 - Yugal Kishor Tamrakar S/o Late Shri Santu Sao Aged About 35 Years R/o Ward No. 06, Gandai, Post And Tehsil Gandai, District Khairagarh Chhuikhadan Gandai, C.G.

11.6 - Laxmi Bai W/o Anil Tamrakar Aged About 32 Years R/o Lal Bahadur Nagar, Ward No. 06, Tehsil- Lal Bhadur Nagar, Block- Dongargarh, District Rajnandgaon, C.G.

12 - Ganesh Sao (Died) Through Lrs As Per Honble Court Order Dated 19-08-2025.

12.1 - Smt. Usha Devi W/o Radhe Tamrakar Aged About 67 Years Village Tamerpara, Durg, C.G.

12.2 - Ashwani Tamrakar S/o Ganesh Sao Tamrakar Aged About 65 Years Gandai, (K.C.G.)

12.3 - Smt. Indu Tamrakar W/o Shri Tekchandra Tamrakar Aged About 60 Years Village- Tamerpara, Durg, Besides Sharda Talkies, Durg, C.G.

12.4 - Smt. Kiran Tamrakar W/o Shri Chandradeep Tamrakar Aged About 58 Years Village- Tamerpara, Durg, C.G.

... Respondents

For Appellants/Defendant No. 3 : Mr. Hemant Kumar Agrawal and Ms. Vaishali Jeswani, Advocates

For Respondents No. 2 to 9 and : Mr. Priyank Rathi, Advocate
10 (a) to (c)

Hon'ble Shri Justice Rakesh Mohan Pandey**C A V Judgment**

1. This appeal under Section 96 of the Code of Civil Procedure has been preferred by the legal representatives of defendant No. 3 against the judgment and decree passed by the Additional Judge, Khairagarh to the Court of District Judge, Rajnandgaon in Civil Suit No. 7-A/87 dated 09.01.1993, whereby the learned trial Court decreed the suit filed by the plaintiffs and it was held that the sale deed dated 21.02.1976 executed by defendant No. 1 in favour of defendants No. 2 and 3 is not binding on the plaintiffs and further declared the plaintiffs owner of the suit property mentioned in Schedule-A. The learned trial Court ordered the original defendant No. 3, Madhav Sao to hand over the possession of the suit property to the plaintiffs.
2. The plaintiffs pleaded that the suit property bearing Survey No. 3/1 admeasuring 32 decimal situated in Village Kopebhatha was purchased by Ummed Sao from Lal Dogendra Shah for the sale consideration of Rs. 1,500/- through a registered sale deed dated 16.11.1957. The plaintiffs constructed a house in the year 1965-66 and left some area open. In the year 1967-68, the father and mother of defendant No.1 were murdered, and defendant No. 1 was sent to jail for charges of murder of his parents. In the year 1969, defendant No. 1 was released from jail and approached the original plaintiff-Ummed Sao and requested shelter. The original plaintiff-Ummed Sao, provided him shelter, and he started residing in some portion of the suit house with the permission of the original plaintiff. Pancham Sao, the father of

defendant No. 1, was the uncle of the original plaintiff-Ummend Sao, and he used to live in the plaintiff's house whenever he visited Gandai or Pandariya. Pancham Sao died on 19.02.1968, and during his lifetime, he never challenged the sale deed dated 16.11.1957. Defendant No. 1 entered into an agreement on 07.05.1975 with the plaintiff and assured that he would vacate the part of the suit house in the month of May 1975. He also admitted the fact that he has no right or title over the suit property, and he was residing there with the permission of the original plaintiff. Defendant No. 1 failed to provide the vacant possession to the plaintiff on 08.05.1975 and granted shelter to one Chandrikaprasad Pandey. The original plaintiff published the notice in Dainik Savera Newspaper on 13.02.1976 and Dainik Deshbandhu Newspaper on 21.02.1976, Raipur Edition, urging the general public not to purchase the subject suit property. On 21.02.1976, the original defendant No. 1 executed a sale deed in favour of defendant No. 2-Ganesh Sao and defendant No. 3 Madhow Sao for a sale consideration of Rs.40,000/- In the year 1976, defendant No. 1 was residing in Village Navagaon. A proceeding under Section 145 of Cr.P.C. was drawn, and it was registered as Misc. Case No. 179/76. The Sub-Divisional Magistrate passed an order on 13.10.1978 and held that defendant No. 1 Santoo Sao was residing in the suit property and defendants No. 2 and 3 are in possession. The plaintiffs preferred a revision against the order dated 13.10.1978, and it was dismissed vide order dated 22.11.1979 by the learned Additional Sessions Judge. Chandrika Prasad Pandey vacated the suit house in the first week of May 1980, but handed over the keys to defendant No. 2 Ganesh Sao. The original plaintiff Ummend Sao filed a suit seeking a declaration of

title, possession, permanent injunction and further declaration that the sale deed dated 21.02.1976 executed by defendant No.1 in favour of defendants No. 2 and 3 is not binding upon the plaintiffs and they have no right over the suit property.

3. Defendant No. 1 filed a written statement and denied the plaint averments. He pleaded that his father, Pancham Sao, had trust in the original plaintiff, Ummed Sao and had business relations too. It is pleaded that the suit property was purchased by his father, Pancham Sao, and the consideration was paid by him, but Ummed Sao, in a deceitful manner, got the sale deed registered in his name.
4. Defendant No. 3 filed a written statement and denied the plaint averments. He stated that he was in possession of the suit property. It is further stated that the financial condition of Ummed Sao was not sound, and he was not in a position to arrange Rs.1,500/- in the year 1957 to purchase the suit land. It is pleaded that Pancham Sao was an able person, and Ummed Sao was working under Pancham Sao. It is also pleaded that the sale consideration of Rs.1,500/- was given by Pancham Sao to Ummed Sao to purchase the suit property, but Ummed Sao got the sale deed registered in his name. It is also stated that mere entry in the revenue records would not confer any right. Defendant No. 3 further pleaded that in the year 1965, the house was constructed over the suit property by Pancham Sao and the open land area was permitted to be used by the original plaintiff, Ummed Sao. It is also pleaded that Pancham Sao stayed in the suit house as an owner till his death, and he has no right or title over the suit property. It is pleaded that the document dated 07.05.1975 is a forged document.

It is also pleaded that the suit property was sold by defendant No.1 by executing a registered sale deed dated 21.02.1976 for a sale consideration of Rs.40,000/- in favour of defendants No. 2 and 3. He further pleaded that the advance amount of Rs.5,000/- was received by Pancham Sao during his lifetime. It is also pleaded that the cause of action arose on 21.02.1976, whereas the suit was filed on 08.05.1980 after 12 years, thus, the same is barred by limitation.

5. The learned trial Court framed **issues** as under:-

1. A) *Whether the suit property was purchased by the original plaintiff- Ummed Sao from the money provided by the father of defendant No. 1 and it remained in his ownership ?*
- B) *Whether the original plaintiff- Ummed Sao fraudulently got registered the sale deed in his favour taking advantage of close relationship between Ummed Sao and the father of defendant No. 1?*
- C) *Whether the plaintiff- Ummed Sao is not the real owner of the suit property ?*
2. *Whether defendant No.1 was residing in the suit house with the prior permission of the original plaintiff since 1969 ?*
3. A) *Whether the plaintiff took the signature of defendant No.1 on a blank stamp paper on 07.05.1975 ?*
- B) *Whether the plaintiff wrote contents of the agreement dated 07.05.1975 by deceiving the defendant No.1 and without his knowledge ?*
4. *Whether the sale deed dated 21.02.1976 granted valid title of the suit property to the defendants No. 2 and 3 ?*
5. *Whether the suit is barred by limitation ?*
6. *Costs and expenses ?*

Additional issues:-

1. *Whether the sale deed dated 21.02.1976 was executed in favour of the defendants No. 2 and 3 without sale consideration ?*

2. *Whether the defendant No. 2 malafidely sold his part of undivided suit house to the defendant No. 3 through the registered sale deed dated 09.05.1980 without acquiring any title thereto? If so, what is the effect ?*

6. The original plaintiff exhibited the registered sale deed dated 16.11.1957 (Exhibit P/1) executed by Lal Dongendra Shah in favour of the original plaintiff, Ummed Sao. The plaintiff exhibited the original sale deed before the learned trial Court. Exhibit P/3 is the registered sale deed dated 21.02.1976 executed by Santoo Sao in favour of Ganesh Ram and Madhow Prasad. Exhibit P/5 is a transfer deed dated 09.07.1980, whereby Ganesh Sao transferred his share in favour of Madhow Prasad for a sale consideration of Rs.11,000/- . Exhibit P/6 to Exhibit P/10 are postal receipts and a copy of legal notices. Exhibit P/11 is the order dated 22.11.1979 passed by the Additional Sessions Judge, Rajnandgaon, against the order dated 13.10.1978 passed by the Sub-Divisional Magistrate, Khairagarh. Exhibit P/13 and Exhibit P/14 are revenue records wherein the name of Ummed Sao is entered against the suit property. Exhibit P/15 and Exhibit P/16 are Newspaper clips. Exhibit P/17 and Exhibit P/18 are orders of diversion. Exhibit P/23 is a copy of *Rin-Pustika* (Land account). Exhibit P/25 to Exhibit P/34 are revenue records, wherein the name of Ummed Sao is mentioned as the owner and title holder of the suit property. Exhibit P/36 is the assessment order of the original plaintiff, Ummed Sao, for the years 1957-58 issued by the Income-Tax Department and according to this document, the total income of the original plaintiff in the said financial year was Rs.4,100/- . Vide Exhibit P/37, Exhibit P/38, Exhibit P/39 and Exhibit P/40, the original plaintiff purchased some more plots from Dhurwa, Rukhmin Bai. Bagela and Piyar.

7. Dharamraj S/o Ummed Sao was examined as PW-1. Ramji Lal Deshmukh was examined as PW-2. Mahesh Sao was examined as PW-3. Whereas, defendant No. 3 (Madhow Prasad) was examined as DW-1, Itwari Ram as DW-2, Shanker Prasad Choubey as DW-3, Laxman Singh as DW-4, Swadesh Pandey as DW-5, Sonu Ram as DW-6 and Tirath Prasad as DW-7. The defendants did not exhibit any documents. Ummed Sao died in the year 1981 after filing the suit. Defendant No. 1 though, filed his written statement, but was proceeded ex parte.
8. The learned trial Court found Ex. P/1, sale deed dated 16.11.1957, genuine and authentic on the ground that the original plaintiff produced it from lawful possession, and it is 30-year-old document. The learned trial Court further held that neither the plaintiff pleaded that the sale consideration was provided by Pancham Sao to purchase the suit property nor did defendant No. 1 lead evidence to prove this fact. The learned trial Court held that the sale deed Ex. P/1 cannot be held as a *benami* transaction. The learned trial Court also held that as the defendants disputed the due execution of the sale deed, Ex. P/1, the primary burden to prove that it was a forged document was on the defendant. It is held that Lal Dogendra Shah, the owner of the suit property, was alive at that time, but the defendants failed to examine him to prove that the sale consideration was provided by Pancham Sao. Defendant No. 3 in para- 9 of his written statement admitted the fact that he had received a legal notice issued by Ummed Sao, wherein it was stated that he is the title holder of the suit property and thus, the learned trial Court has held that defendants No. 2 and 3 had the knowledge with regard to the ownership of Ummed Sao of the suit

property. The learned trial Court further held that defendants No. 2 and 3 were not the bona fide purchasers. The learned trial Court held that the original plaintiff-Ummed Sao, was the brother of Pancham Sao, and this fact has been admitted by defendant No. 3 in his evidence. He admitted the fact that the financial status of Ummed Sao was sound. The learned trial Court further placed reliance on Ex. P/36, assessment of income of Ummed Sao for the year 1957-58. The learned trial Court further placed reliance on the sale deed executed in favour of the original plaintiff, Ummed Sao, vide Ex. P/37 for the sale consideration of Rs.100/-, Ex. P/38, sale deed worth Rs.2,000/-, and Ex. P/40, sale deed worth Rs.100/-. The learned trial Court also held that after the murder of the parents of defendant No. 1, Santoo Sao sought shelter in the house of Ummed Sao. It is also held that the suit house was constructed under the supervision of Ummed Sao, and Pancham Sao was never in possession of the suit house.

9. The revenue documents would show that the suit property was entered in the name of Ummed Sao. The order of diversion was also passed in favour of Ummed Sao. The learned trial Court recorded a finding that the sale deed, Ex. P/1 is not the outcome of fraud; rather, it was a sale deed executed by Lal Dogendra Shah in favour of Ummed Sao. The learned trial Court held that the agreement dated 07.05.1975, Ex. P/59 was executed by Santoo Sao himself, and it was drafted by PW-2 Ramji Lal Deshmukh. It is further held that defendant No. 1 never acquired title or right over the suit property and therefore, he had no right to execute a sale deed in favour of defendants No. 2 and 3. The learned trial Court further held that the cause of action arose on 21.02.1976 when the sale deed was executed by defendant No. 1 in

favour of defendants No. 2 and 3, and thus, the suit was filed within a period of 12 years from the said date.

10. Mr. Hemant Kumar Agrawal, learned counsel appearing for the appellants/defendant No. 3, would submit that DW-1 Madhow Prasad, in his evidence, categorically stated that the financial condition of Ummed Sao was not sound and Ummed Sao deceitfully got the sale deed registered in his favour. Mr. Agrawal would further submit that PW-3 Mahesh Sao, in para-5, has admitted the fact that the financial condition of Pancham Sao was sound as he was a moneylender. Madhow Prasad has stated that Ummed Sao never remained in possession of the suit property, and likewise, DW-2 Itwari Ram has stated similarly. Mr. Agrawal would also submit that DW-3 Shanker Prasad Choubey has stated that the suit house was constructed by Pancham Sao in the year 1957-58, and Chandrikaprasad Pandey was a tenant. The witnesses- DW-4 Laxman Singh, DW-5 Swadesh Pandey, DW-6 Sonu Ram and DW-7 Tirath Prasad have supported the case of defendant No. 3. Mr. Agrawal would further contend that PW-1 Dharamraj has admitted the fact that the suit house was in possession of Pancham Sao, and open land is in their possession. He would contend that the mere entries in the revenue records would not confer any right in favour of Ummed Sao. He would also contend that the registration of the sale deed in favour of Ummed Sao would not confer title in his favour. He would state that the suit was not filed within 12 years from the date of the execution of the sale deed dated 16.11.1957. Thus, the suit was barred by limitation. Mr. Agrawal would further state that the sale deed was executed by defendant No. 1 in favour of defendants No. 2 and 3 on 21.02.1976, and for the

cancellation of the sale deed, the limitation period according to Article 59 of the Limitation Act is 03 years, which expired on 20.02.1979, whereas the suit was filed on 08.05.1980. Thus, the suit was barred by limitation. Mr. Agrawal has placed reliance on the judgment passed by the Hon'ble Supreme Court in the matter of ***Mallavva and Another Vs. Kalsammanavara Kalamma (Since Dead) by Legal Heirs and Others***, reported in **2024 SCC OnLine SC 3846**, wherein it is held that as the suit was filed for cancellation of the sale deed and recovery of possession, which would suggest that the plaintiff has already lost his title, and therefore, the period of limitation would be three years and not twelve years. He would pray to set aside the judgment and decree passed by the learned trial Court.

11. Mr. Priyank Rathi, learned counsel appearing for respondents No. 2 to 9 and 10 (a) to (c) would contend that the defendants neither pleaded nor proved the ingredients of adverse possession. He would contend that defendant No. 1 failed to plead and prove the date of hostile possession and the period of its continuation. He would further submit that defendant No. 1 failed to file counter claim seeking relief of ownership on the principle of adverse possession. In this regard, Mr. Priyank Rathi has placed reliance on the judgment passed by the Hon'ble Supreme Court in the matter of ***Kishundeo Rout & Ors. Vs. Govind Rao & Ors., Neutral Citation: 2025 INSC 956***.
12. Mr. Rathi would further argue that the defendants in their written statement have pleaded independent title on the ground that the suit property was purchased by Pancham Sao; at the same time, defendant No. 1 has taken the plea of adverse possession. He would also argue that the claim of independent title and adverse possession at the same

time amounts to contradictory pleas. In this regard, Mr. Rathi has placed reliance on the judgment passed by the Hon'ble Supreme Court in the matter of **Government of Kerala and Another Vs. Joseph and Others**, reported in **(2023) 17 SCC 400**.

13. With regard to the period of limitation, Mr. Rathi would submit that the original plaintiff filed the suit for declaration of title and recovery of possession based on title. He would contend that the computation of the limitation period is to be reckoned in accordance with Article 65 of the Limitation Act. He would also contend that the substantial relief sought by the plaintiffs is of possession based on title. In this regard, he has placed reliance on the judgment passed by the Hon'ble Supreme Court in the matter of **Mallavva (supra)**.
14. Mr. Rathi would state that the suit property was purchased by the original plaintiff, Ummed Sao, from Lal Dogendra Shah through a registered sale deed dated 16.11.1957 for a sale consideration of Rs.1,500/- . The application moved by the original plaintiff for diversion was allowed by the competent authority and the suit house was constructed by the original plaintiff, Ummed Sao. He would contend that defendant No.1 was provided shelter by the original plaintiff and defendant No. 1 never acquired title over the suit property; therefore, he had no authority of law to execute a sale deed in favour of defendants No. 2 and 3. He would also contend that the defendants could not adduce a single documentary evidence to establish the fact that defendant No. 1 had never acquired the right over the suit property. He has placed reliance on the judgment passed by the Hon'ble Supreme Court in the matter of **Kizhakke Vattakandiyil Madhavan (Dead) Thr. LRs. Vs. Thiyyurkunnath Meethal Janaki**

and Ors, 2024 SCC OnLine 517, wherein it is held that the execution of the sale deed without ownership does not entitle the transferee or his successor to claim any right based on such deed. Mr. Rathi would submit that the appeal deserves to be dismissed.

15. I have heard learned counsel for the parties and perused the records of learned Court below with utmost circumspection.
16. The Questions for Determination would be:-
 - (i) *Whether the learned trial Court rightly decreed the suit ?*
 - (ii) *Whether the defendant No. 1 had the authority of law to execute the sale deed in favour of defendants No. 2 and 3 ?*
17. The admitted facts are that the late Ummed Sao purchased the suit property bearing Survey No. 3/1 ad-measuring 32 decimal through a registered sale dated 16.11.1957 from one Lal Dogendra Shah. The parents of defendant No.1 were murdered in the year 1967-68, and defendant No. 1 was arrested in the aforesaid crime. He was acquitted in the year 1969. A house is constructed over half of the suit property of open land. Open land is in possession of the plaintiffs. The plaintiffs are the legal heirs of late Ummed Sao. Defendant No. 1 alienated the suit property through a registered sale deed dated 21.02.1976 to defendants No. 2 and 3. Subsequently, defendant No. 2 executed a relinquishment deed in favour of defendant No. 3.
18. The plaintiffs filed the civil suit claiming therein the relief of declaration of title, possession and permanent injunction. They sought a declaration that the sale deed executed by defendant No. 1 in favour of defendants No. 2 and 3, dated 21.02.1976, is not binding upon them.

19. Defendants No. 1 and 3 filed a written statement and denied the plaint averments.
20. The owner of the suit property was Lal Dogendra Shah, and this fact has not been disputed by the defendants. He executed a sale deed in favour of late Ummed Sao on 16.11.1957 vide Ex. P/1. Defendants No. 1 and 2 took a plea that the suit property was purchased by late Ummed Sao in favour of Pancham Sao. Pancham Sao is the father of the defendant No.1.
21. Perusal of Ex. P/1, the sale deed dated 16.11.1957 would show that the sale deed was executed by Shri Lal Dogendra Shah in favour of Ummed Sao for a sale consideration of Rs.1,500/- and possession was also handed over. The sale deed was drafted by PW-2 Ramji Lal Deshmukh. The recital of the sale deed would show that there was a transaction between Lal Dogendra Shah and Ummed Sao, and there is no whisper that the suit property was purchased by Ummed Sao on behalf of Pancham Sao. PW-2 has proved the contents of Ex. P/1. In cross-examination, he stated that the financial condition of Ummed Sao was sound. Further, the original sale deed was produced by the plaintiffs before the learned trial Court.
22. Taking into consideration the recital of the sale deed and evidence of Ramji Lal (PW-2), in my opinion, the sale deed was not an outcome of fraud.
23. With regard to the *benami* transaction, as argued by Mr. Hemant Kumar Agrawal, the sale deed was executed by Lal Dogendra Shah in favour of Ummed Sao, and it was a valid contract. The defendants could not establish that there was any *benami* transaction between the parties, and a mere assertion that the suit property was purchased by

late Ummed Sao for late Pancham Sao is not admissible in the absence of clinching evidence.

24. A plea of fraudulent transaction was taken by defendants No. 1 and 3; therefore, the burden was on the defendants to prove this fact. Defendant No. 1 did not appear in the witness-box, and defendant No. 3, Madhow Prasad, failed to prove this fact. According to the provisions of Section 102 of the Indian Evidence Act, 1872, the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. In the year 1992, Lal Dogendra Shah was alive, but the defendants failed to examine that witness to prove the factum of fraud or the fact that the suit property was purchased by Ummed Sao on behalf of the late Pancham Sao.
25. DW-1 Madhow Prasad has not deposed with regard to the execution of the sale deed. He pleaded that in the year 1957, the financial condition of Ummed Sao was not sound to make payment of the sale consideration to Lal Dogendra Shah. The income tax return of Ummed Sao, placed on record as Ex. P/36, would show that late Ummed Sao was financially sound, and he was an income tax payee. He purchased various immovable properties vide Exhibit P/37 to Exhibit P/40. Thus, the submissions made Mr. Hemant Kumar Agrawal with regard to the financial condition of late Ummed Sao cannot be accepted.
26. Perusal of the revenue documents Exhibit P/25 to Exhibit P/34 would reveal that the suit property was recorded in the name of Ummed Sao. Defendant No. 1 could not adduce documentary evidence to establish the fact that the suit property was ever recorded in his name. The witnesses examined by the plaintiffs have proved the fact that the

possession of defendant No.1 was permissive in nature and therefore, defendant No.1 had no authority of law to execute the sale deed in favour of defendants No. 2 and 3. Further, the alienation of the property by defendant No. 2 in favour of defendant No. 3 by executing a relinquishment deed is also bad-in-law.

27. In the matter of ***Kizhakke Vattakandiyil Madhavan (supra)***, the Hon'ble Supreme Court, in para- 18, held as under:-

"18. The High Court as also the Trial Court have held that since the deeds were proved, implying that Cheruthey had the right to execute the lease deed on 14th July 1910 so far the deed of release is concerned, the same might entitle her to be the beneficiary as a lessee thereof. But it would be trite to repeat that even if subsistence of a deed is proved in evidence, the title of the executing person (in this case Chiruthey) does not automatically stand confirmed. If a document seeking to convey immovable property *ex-facie* reveals that the conveyer does not have the title over the same, specific declaration that the document is invalid would not be necessary. The Court can examine the title in the event any party to the proceeding sets up this defence. Chiruthey could not convey any property over which she did not have any right or title. Her right, if any, would stem from the second deed of lease (Exhibit A-1). We are conscious of the fact that no claim was made before any forum for invalidating the deed dated 14th July 1910 (Exhibit A-20). But in absence of proper title over the subject property, that lease deed even if she was its sole lessor would not have had been legally valid or enforceable. If right, title or interest in certain property is sought conveyed by a person by an instrument who herself does not possess any such form of entitlement on the subject being conveyed, even with a subsisting deed of conveyance on such property, the grantee on her successors-in-interest will not have legal right to enforce the right the latter may have derived from such an instrument. We, however, have not disturbed the transaction arising from Exhibit A-20 as the two legal heirs of Madhavan were also the lessors therein and to that extent, the document marked as Exhibit A-20 would not have collapsed for want of conveyable title, right or interest. What

she got back by way of the document marked as Exhibit A-1 was limited right as that of a lessee and not as a successor of her first husband Madhavan (since deceased). Moreover, this lease (Exhibit A-1) was also for a period of twelve years and the re-lease deed made in the year 1925 which is Exhibit A-2 could not operate as by that time, the entitlement of Kuttiperavan over the subject property also stood lapsed as the document marked as Exhibit A-1 also had a duration of twelve years. No evidence has been shown before us as to how Kuttiperavan, in the capacity of a lessee could exercise his right after the term of lease granted to him was over.”

28. With regard to the issue of limitation, the sale deed was executed by defendant No.1 in favour of defendants No. 2 and 3 on 21.02.1976, whereas the suit for declaration of title and possession was filed on 08.05.1980.
29. Mr. Hemant Agrawal has placed reliance on the judgment passed in the matter of ***Mallavva (supra)***, wherein the Hon'ble Supreme Court in para- 38 held as under:-

“38. The dictum as laid in *Rajpal Singh Vs. Saroj (deceased) through Legal Representatives and Another, (2022) 15 SCC 260* cannot be made applicable to the facts and circumstances of the case on hand. The reason is simple. Ordinarily when, a suit is filed for cancellation of Sale Deed and recovery of possession, the same would suggest that the title of the plaintiff has already been lost. By seeking to get the Sale Deed set aside on the grounds as may have been urged in the plaint, the plaintiff could be said to be trying to regain his title over the suit property and recover the possession. In such circumstances, the period of limitation would be three years and not twelve years.”

30. In the matter of ***Rajpal Singh (Supra)***, the judgment was delivered by a bench of two Hon'ble Judges of the Supreme Court, whereas ***Sopanrao vs. Syed Mehmood, 2019 (7) SCC 76***, was rendered by a

bench of three Hon'ble Judges of the Supreme Court. In **Sopanrao (supra)**, it is held that since the suit was not filed only for a declaration but the plaintiff also sought possession of the suit land, and the period of the limitation for instituting a suit for possession based on title would be twelve years. Consequently, the suit would be within the limitation period. It is further clarified that merely because one of the reliefs sought is declaratory in nature does not imply the forfeiture of the twelve-year limitation period. The relevant para- 9 is reproduced as under:-

“9. It was next contended by the learned counsel that the suit was not filed within limitation. This objection is totally untenable. Admittedly, the possession of the land was handed over to the Trust only in the year 1978. The suit was filed in the year 1987. The appellants contend that the limitation for the suit is three years as the suit is one for declaration. We are of the view that this contention has to be rejected. We have culled out the main prayers made in the suit hereinabove which clearly indicate that it is a suit not only for declaration but the plaintiffs also prayed for possession of the suit land. The limitation for filing a suit for possession on the basis of title is 12 years and, therefore, the suit is within limitation. Merely because one of the reliefs sought is of declaration that will not mean that the outer limitation of 12 years is lost. Reliance placed by the learned counsel for the appellants on the judgment of this Court in L.C. Hanumanthappa v. H.B. Shivakumar is wholly misplaced. That judgment has no applicability since that case was admittedly only a suit for declaration and not a suit for both declaration and possession. In a suit filed for possession based on title the plaintiff is bound to prove his title and pray for a declaration that he is the owner of the suit land because his suit on the basis of title cannot succeed unless he is held to have some title over the land. However, the main relief is of possession and, therefore, the suit will be governed by Article 65 of the Limitation Act, 1963. This Article deals with a suit for possession of immovable property or any interest therein based on title and the limitation is 12 years from the date when possession of the land

becomes adverse to the plaintiff. In the instant case, even if the case of the defendants is taken at the highest, the possession of the defendants became adverse to the plaintiffs only on 19.08.1978 when possession was handed over to the defendants. Therefore, there is no merit in this contention of the appellants."

31. Taking into consideration the law laid down by the Hon'ble Supreme Court in the matter of **Sopanrao (supra)**, as the suit was filed by the plaintiff for declaration of title along with possession, the suit was well within limitation as it was filed before the expiry of 12 years from the date of execution of the sale deed.
32. With regard to the plea of adverse possession, in the written statement, there is no foundation for the plea of adverse possession. Defendant No. 1 could not plead and prove the fact that on what date he came into possession, what was the nature of his possession, whether the factum of his possession was known to the legal claimants and how long his possession continued. The Hon'ble Supreme Court in the matter of **Kishundeo Rout (supra)**, in paras- 19, 20 and 30 held as under:-

"19. It is a settled position of law that the foundation for the plea of adverse possession must be laid in the pleadings and then an issue must be framed and tried. A plea not properly raised in the pleadings or in issues at the stage of trial would not be permitted to be raised for the first time at the stage of First Appeal Under Section 96 of the Code of Civil Procedure (CPC).

20. The plea of adverse possession is not always a legal plea. Indeed, it is always based on facts which must be asserted and proved. A person who claims adverse possession must show on what date he came into possession, what was the nature of his possession, whether the factum of his possession was known to the legal claimants and how long his possession continued. He must also show whether his possession was open and undisturbed. These are

all questions of fact and unless they are asserted and proved, a plea of adverse possession cannot be inferred from them. Therefore, in normal cases an appellate Court will not allow the plea of adverse possession to be raised before it. There is no doubt some cases in which the plea will be allowed because in some form the allegation upon which it can be raised was made at the time and the facts necessary to prove the plea were brought before the court and proved. Such a case is the one of which the decision is reported in Municipal Board, Etawah v. Mt. Ram Sri and Anr. reported in MANU/UP/0113/1931 : A.I.R. 1931 All. 670. In that case the Plaintiffs based their suit on title extending over a period of thirty years. "The Plaintiffs" case was that Plaintiff 1 was the owner of the land and she had on that plot four small shops fetching a rent of about Rs.80 a month. Plaintiff 2 is her lessee. The shops were burnt down in June, 1926 and the land was laid vacant. The Plaintiffs made an application to the Municipal Board for permission to build again on the land, but this permission was refused on 27th August, 1926, on the ground that the Municipal Board was the owner of the land and not the Plaintiffs." The learned Judges of the Allahabad High Court held that a plea of adverse possession extending over a period of thirty years could be read into this claim and therefore although it was not specifically raised in the plaint yet it could be raised at a later stage. In other words, what they held was that the plea of adverse possession was included in the plea of title. In coming to this conclusion the learned Judges no doubt took notice of the fact that the Plaintiffs had clearly stated that actual physical possession of the property in dispute was with them.

30. The above discussion leads us to the only conclusion, and that is, that, unless the plea of adverse possession has been specifically raised in the pleadings, put in issue, and then cogent and convincing evidence led on a multitude of points, and an opportunity to refute the case made out by the Plaintiff, availed of by the Defendant, the plea of adverse possession cannot be allowed to be flung as a surprise, on an unsuspecting Defendant, for the first time in appeal."

33. Taking into consideration the pleadings made in the written statement, evidence led by the defendants and the law laid down by the Hon'ble Supreme Court, in my opinion, the defendants could not establish their right over the property by way of adverse possession.

34. Further, defendant No. 1 has claimed his title based on title over the suit property on the ground that it was purchased by Pancham Sao and at the same time, he has taken the plea of adverse possession. It is a well-settled position of law that the claim of independent title or adverse possession at the same time amounts to contradictory pleas.

35. The Hon'ble Supreme Court in the matter of **Joseph (supra)**, in paras-40, 40.1 and 40.2 held as under:-

“40. Claim of independent title and adverse possession at the same time amounts to contradictory pleas.

40.1 *Annasaheb Bapusaheb Patil v. Balwant*, (1995) 2 SCC 543 (three-Judge Bench) elaborated this principle as: (SCC p. 554, para 15)

“15. Where possession can be referred to a lawful title, it will not be considered to be adverse. The reason being that a person whose possession can be referred to a lawful title will not be permitted to show that his possession was hostile to another's title. One who holds possession on behalf of another, does not by mere denial of that other's title make his possession adverse so as to give himself the benefit of the statute of limitation. Therefore, a person who enters into possession having a lawful title, cannot divest another of that title by pretending that he had no title at all.”

40.2 This principle was upheld in *Mohan Lal v. Mirza Abdul Gaffar*, (1996) 1 SCC 639 (two-Judge Bench): (SCC pp. 640-41, para 4)

“4. As regards the first plea, it is inconsistent with the second plea. Having come into possession under the agreement,

he must disclaim his right thereunder and plead and prove assertion of his independent hostile adverse possession to the knowledge of the transferor or his successor in title or interest and that the latter had acquiesced to his illegal possession during the entire period of 12 years i.e. up to completing the period of his title by prescription *nec vi, nec clam, nec precario*. Since the appellant's claim is founded on Section 53-A, it goes without saying that the admits by implication that he came into possession of the land lawfully under the agreement and continued to remain in possession till date of the suit. Thereby the plea of adverse possession is not available to the appellant."

The Court in *Uttam Chand v. Nathu Ram*, (2020) 11 SCC 263 has reiterated this principle of adverse possession."

36. Taking into consideration the above-discussed facts and the law laid down by the Hon'ble Supreme Court, in my opinion, the learned trial Court rightly decreed the suit. A perusal of evidence and documents would show that defendant No. 1 had no authority of law to execute the sale deed in favour of defendants No. 2 and 3. The Questions for Determination are answered accordingly.
37. As a result, this appeal fails and is hereby **dismissed**.
38. No order(s) as to Cost(s).

Sd/-
(Rakesh Mohan Pandey)
Judge