2026:CGHC:10373

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

SA No. 546 of 2016

Judgment reserved on 08/12/2025

Judgment delivered on 27/02/2026

1 - Smt. Injoriya W/o Ishwar Dayal, Aged About 45 Years S/o Ramprasad, R/o Village- Baselpur, Chhoti Salhi, Police Station And Tahsil- Khadgawan, District Korea, Chhattisgarh

2 - Smt. Fuleshwari W/o Shambhu Sahu, Aged About 44 Years R/o Village- Amka, Police Station And Tahsil- Khadgawan, District- Korea Chhattisgarh .....Defendants

... Appellants

versus

1 - Shivkumar S/o Gangaram, Aged About 40 Years R/o Village- Tutimar Laad, Tahsil- Katghora, District- Korba, Chhattisgarh

2 - Smt. Sewari D/o Gangaram, Aged About 42 Years R/o Village- Bango, Police Station- Bango, Tahsil- Bango, District- Korba, Chhattisgarh .....Plaintiffs

3 - State Of Chhattisgarh, Through The Collector, Korea, Place At Baikunthpur, District- Korea, Chhattisgarh .....Defendant No.3

... Respondents

(Cause Title taken from Case Information System)

For Appellants	:	Mr. Rishikant Mahobia, Advocate
For Respondents No. 1 & 2	:	Mr. V.K. Pandey, Advocate
For Respondent No.3/State	:	Mr. Kalpesh Ruparel, Panel Lawyer

Hon'ble Shri Ravindra Kumar Agrawal, Judge

C.A.V. JUDGMENT

1. The second appeal under Section 100 of the Code of Civil Procedure, 1908 has been filed by the defendants No. 1 and 2 against the impugned judgment and decree dated 24.09.2016, passed by learned First Additional District Judge, Manendragarh, District Koriya, in Civil Appeal No. 9-A/2015, whereby the first appeal filed by the plaintiffs was allowed and the judgment and decree dated 30.09.2014, passed by learned Civil Judge Class-1, Chirmiri, District Koriya, in Civil Suit No. 64-A/2011 was set aside.

2. For the sake of convenience, the status of the parties is referred to as shown in the civil suit.

3. The second appeal is admitted on 15.05.2017 on the following substantial questions of law:-

> “1. Whether the lower appellate court was justified in reversing the finding of the trial Court by holding that the plaintiffs’ have acquired their right, title and interest over the suit property by virtue of the Adhikar Abhilekh (exhibit P-6)?
>
> 2. Whether the findings of the trial court dismissing the suit on the point of limitation could be set at naught by the lower appellate court, even without setting aside the said finding?”

4. The plaintiffs had filed a civil suit against the defendants for declaration of title, declaring the sale-deed executed by defendant No.1 in favour of

the defendant No.2 is null and void, possession of the suit property and for permanent injunction over the suit property of khasra No. 11 and 135, area 0.450 and 0.110 hectare respectively, situated at Village Amka, Tahsil Khadgawan, District Koriya. They pleaded in the plaint that the defendant No.1 is the cousin sister of the plaintiffs. The land of khasra No. 11 and 135, area 0.450 and 0.110 hectare (old khasra No. 15/3 and 28) was allotted by the then Madhya Pradesh State Government to the father of the plaintiffs, namely Gangaram by the order dated 13.06.1966, passed by SDO (Revenue), Koriya (Baikunthpur) and since then, the father of the plaintiffs was in possession. Due to the necessity of the family, their father was also earning the lands at village Tutimar Lad. On 16.10.1973, Gangaram was convicted in a criminal case and sentenced to life imprisonment, and during the period of sentence, he gave his land of village Amka to his brother Ramprasad for cultivating in adhiya and the nurture of his minor sons, i.e. the plaintiffs. Ramprasad was cultivating the land and regularly given half share of the crop to the plaintiffs' family. The mother of the plaintiffs has remarried and gone somewhere else. After being released from jail, the father of the plaintiffs died. Thereafter, Ramprasad stopped giving the share of the crop to the plaintiffs, and by the collusion of the revenue authorities, he got the name of his daughter/defendant No.1, Injoriya, mutated in the revenue records of the suit land. After sometime, the plaintiffs came to know that, the defendant No.1 has sold the suit land to defendant No.2. It is also pleaded that, since the land was obtained by the father of plaintiffs, it cannot be transferred without prior permission of the District Collector to any third person and the mutation in the name of Injoriya Bai, itself is

null and void, and she has no right or title to sell the land, therefore, the suit has been filed.

5. The defendants No. 1 and 2 have contested the claim of the plaintiffs and filed their written statement. They denied the plaintiff's averment and pleaded that the suit land was jointly owned and possessed by Gangaram and Ramprasad. Since Gangaram was the elder member of the family, the patta was granted in his name, but both brothers were jointly cultivated. Both the brothers, i.e. Gangaram and Ramprasad, have settled that one brother should be shifted to Tutimar Lad and the other brother should be shifted to village Amka, and it was settled between them that Gangaram should go to Tutimar Lad and Ramprasad will take the land of village Amka. Accordingly, Gangaram has gone to village Tutimar Lad and subsequently executed a gift deed in favour of the defendant No.1. He never claimed the land of village Amka during his lifetime, even after being released from jail, he has not claimed it. The father of defendant No.1 nurtured the plaintiffs and performed their marriages and got them settled in their occupation. The land of the village Amka was obtained by the father of the defendant No.1 in the family settlement. The mutation of the name of defendant No.1 over the suit land was on the basis of the gift deed executed by the father of the plaintiffs, and the mutation was legally done. The land of old khasra No. 15 was obtained on the basis of old possession since the lifetime of their ancestors, there was no need of any permission from the District Collector for alienation and the land of khasra No. 28 was purchased by Gangaram and Ramprasad jointly, therefore, the alienation of the suit lands in favour of the defendant No.2 is also valid

and the plaintiffs have no right to challenge the sale-deed and the defendant No.1 is presently in possession of the suit land. It is also pleaded by the defendants that the mutation in the name of defendant No.1 was well within the knowledge of the plaintiffs since its inception, and thus, the suit of the plaintiffs is barred by limitation.

6. Based on the pleadings of the parties, the learned trial Court framed issues and proceeded for recording evidence of the parties. The plaintiffs have examined PW-1/Shiv Kumar, PW-2/Hajarilal, PW-3/ Jaykaran Kurre and have relied upon the documents (exhibit P-1 and P-2), which are the B-1 Kishtbandi and Khasra Panchshala; exhibit P-3 is the Patwari map, exhibit P-4 is the renumbering list, exhibit P-5 is another Patwari map, exhibit P-6 is the copy of Adhikar Abhilekh of the year 1954-55, exhibit P-7 is the copy of Sanshodhan Panji dated 15.07.1975; exhibit P-8 is the sale-deed. The defendants have examined Fuleshwari Bai (defendant No.2)/DW-1, Bachchalal/DW-2, and Mansai/DW-3, but they have not relied on any document.

7. After appreciation of oral as well as documentary evidence led by the parties, the learned trial Court dismissed the suit of the plaintiffs by holding that, the plaintiffs have failed to prove their title and possession over the suit land and the suit is appears to be barred by limitation as the mutation in the name of Injoriya Bai was done in the year 1975 on the basis of gift deed and in the year 1984, when Gangaram released from jail, he has not raised any objection and even before 2011, i.e. the time when the suit land was sold to defendant No.2, no objection was raised by the plaintiffs, and therefore, the plaintiffs are not entitled for any relief.

8. The judgment and decree passed by learned trial Court was challenged by the plaintiffs before the learned First Appellate Court and the learned First Appellate Court allowed the appeal filed by the plaintiffs and decreed the suit in their favour by setting aside the judgment and decree of the learned trial Court and held that, the suit land was acquired by Gangaram from the State Government in the year 1966 and in the year 1975, the name of Injoriya Bai was mutated in the revenue records on the basis of gift deed executed by Gangaram, which is within 10 years of its acquisition and as per Section 158(3) of the Chhattisgarh Land Revenue Code, 1959 such land cannot be transferred within 10 years of its acquisition. It was also held that Gangaram was not competent to execute gift deed in favour of Injoriya Bai without prior permission of the Collector under Section 165(7-B) of the C.G. Land Revenue Code and held that, the transaction in favour of Injoriya Bai and subsequent transaction in favour of defendant No.2 is illegal and declared that, the plaintiffs are title holder of the suit land and entitled for possession of the same. The judgment and decree passed by the learned First Appellate Court are challenged in the present second appeal.

9. Learned counsel appearing for the defendants would submit that the learned First Appellate Court has erred in holding that the plaintiffs are the title holders of the suit property and entitled to possession. He would submit that, after the acquisition of title by Gangaram over the suit land, he executed a gift deed in favour of Injoriya Bai, which was the rightful transfer and the said transaction is not barred under Section 158(3) of the C.G. Land Revenue Code. The plaintiffs or their father

have not challenged the said gift deed. The defendant No.1 has been in possession of the suit land since 1975 without raising any objection by the plaintiffs, and after about 36 years, the present suit has been filed, which is beyond the limitation period, and the suit of the plaintiffs was barred by limitation. The learned trial Court has rightly held that the suit of the plaintiffs is barred by limitation, but the learned First Appellate Court, without considering and without reversing the finding of limitation, decreed the suit of the plaintiffs. He would further submit that, when the suit itself was barred by limitation, no relief can be granted in favour of the plaintiffs. The issue of limitation has not been considered by the learned First Appellate Court, and therefore, the impugned judgment and decree passed by the learned First Appellate Court is erroneous and liable to be set aside.

10. It is also submitted by him that, the learned First Appellate Court has erred in considering the provisions of Sections 158(3) and 165(7-B) of the Chhattisgarh Land Revenue Code, 1959 and held that, the mutation in favour of Injoriya Bai is illegal and she has not acquired any title over the suit property and consequently the alienation made by her in favour of the defendant No.2 is also illegal. Gangaram also had land at village Tutimar Lad, and therefore, the land cannot be allotted to him at village Amka under the Ceiling Act. It was the land allotted to both the brothers, i.e. Gangaram and Ramprasad. The transfer of the land by Gangaram in favour of Injoriya Bai was not challenged by Gangaram till his lifetime. From the document (exhibit P-6), only the land of khasra No. 15, area 1.00 acre, was said to have been allotted and not the land of khasra No. 28, and there is no document of their title over both these lands, yet the

decree has been passed. Therefore, the impugned judgment and decree passed by the learned First Appellate Court is liable to be set aside, and the substantial question of law may be answered in their favour.

11. On the other hand, learned counsel appearing for the plaintiffs supported the impugned judgment and decree passed by the learned First Appellate Court and submits that there was no issue framed by the learned trial Court with respect to the limitation to file the suit. The learned trial Court has not dismissed the suit on the issue of limitation, but dismissed the suit on merits, and the merits of the case have been considered by the learned First Appellate Court also. He would further submit that the relevant entries have been made in the record of right, and it is not in dispute that the land was allotted to the father of the plaintiffs in the year 1966 by the State Government, and there was no right of the father of defendant No.1 over the suit land. In the document (exhibit P-7) i.e. the mutation register, it has been mentioned that, in the year 1972, a gift deed was executed in favour of Injoriya Bai by Gangaram and on that basis, her name was mutated and the said transaction was within 10 years of the acquisition of the land from State Government, which is barred under Section 158(3) and 165(7-B) of the C.G. Land Revenue Code, and thus, no title has been transferred in favour of Injoriya Bai and she was not competent to alienate the same in favour of the defendant No.2, which was rightly considered by the learned First Appellate Court and granted a decree in favour of the plaintiffs, which is neither perverse nor illegal.

12. I have heard learned counsel for the parties and perused the records of

the trial Court as well as First Appellate Court.

13. The claim of the plaintiffs in the suit is on the basis of the fact that the suit land was allotted to their father, Gangaram, in the year 1966 from the State Government. The name of Gangaram was entered in the record of right (exhibit P-6) with the endorsement that "मध्यप्रदेश के सीलिंग एक्ट के अनु. अनुवि. अधिकारी कोरिया आदेश दिनांक 13.06.66 के अनुसार बंदोबस्त होने के कारण". The third part of column No. 6 shows that the said entry in the record of right is made on 08-03-1967. As per the record of rights (Ex. P-6), only the land of Kh. No. 15 (new Kh. No. 11), area 1.00 acre, has been allotted to the father of the plaintiffs. The said entry or acquisition of the property by Gangaram has never been challenged by any of the parties or even by the State Government. The record of right has also not denied by the parties. Rather, the claim of the defendants also flows through the said record of right that Gangaram was having right and title over the property, and he executed a gift deed in favour of Injoriya Bai, and then Injoriya Bai sold the property to the defendant No. 2. Thus, the flow of the transaction of the land of Kh. No. 15 (new Kh. No. 11) comes from the said record of right exhibit P-6.

14. The "Land Records" are defined in Chapter IX of the Chhattisgarh Land Revenue Code, 1959 (in short, the "Code of 1959"). The record of right is also a Land Record recognized under Section 108 of the "Code of 1959", prepared in accordance with the relevant rules. The relevant provision of Section 108 of the Code of 1959 is quoted hereinbelow, which is as under:-

“108. Record of rights.

(1) A record-of-rights shall in accordance with rules made in this behalf be prepared and maintained for every village and such record shall include following particulars :-

(a) the names of all bhumiswamis together with survey numbers or plot numbers held by them and their area, irrigated or urtirrigated;

(b) the names of all occupancy tenants and Government lessees together with survey numbers or plot numbers held by them and their area, irrigated or unirrigated;

(c) the nature and extent of the respective interests of such persons and the conditions or liabilities, if any, attaching thereto;

(d) the rent or land revenue, if any, payable by such persons; and

(e) such other particulars as may be prescribed.

(2) The record-of-rights mentioned in sub-section (1) shall be prepared during a revenue survey or whenever the State Government may, by notification, so direct.

15. Section 117 of the Code of 1959 provides that all entries made in the land records shall be presumed to be correct until they are rebutted. Section 117 of the Code of 1959 reads as under:-

> 117. Presumption as to entries in land records.
>
> - All entries made under this Chapter in the land records shall be presumed to be correct until the contrary is proved.

16. The presumption under Section 117 of the Code of 1959 is a rebuttable presumption. In the present case, the defendants could not be able to rebut the presumption, but they supported the entries made in the record of right Ex. P-6. It is the case of the defendants that Gangaram had gifted the property to his niece, Injoriya Bai, through a gift deed in the year 1972. Although the defendants have pleaded that the suit property was acquired by Gangaram and his brother, Ram Prasad, jointly, and that only the name of Gangaram was recorded in the revenue records, there is no evidence that Ram Prasad also acquired the suit property. It is recorded in the record of rights, Ex. P-6 that under the Ceiling Act, the lands were allotted to Gangaram. The document of record of rights only bears the land of Kh. No. 15 (new Kh. No. 11), area 1.00 acre, whereas the document of Sansodhan Panji (Ex. P-7) bears the entry that the land of Kh. No. 15/3 and 28, (new Kh. No. 11 and 135), area 0.405 Hect. And 0.105 Hect. Respectively, have been gifted to Injoriya Bai, by the father of the plaintiffs, namely Gangaram.

17. It is also the case of the defendants that Gangaram and Ram Prasad, under their mutual settlement, settled their property, and Gangaram

went to the village Tutimar Lad and executed a gift deed in favour of the defendant No. 1 with the consent of Ram Prasad, with respect to the property of village Amka. From the document Ex. P-7, which is the Sansodhan Panji of the year 1975, it is recorded that Gangaram executed a gift deed in plain paper in the year 1972 in favour of Injoriya Bai.

18. In the evidence adduced by the plaintiff, the title of Gangaram over the suit property has not been disputed by the defendants. The D.W. 1 Fuleshwari Bai, admitted in para 7 of her deposition, that Gangaram was the title holder of the suit property. When the title of Gangaram is not in dispute over the suit property, the entries made in the record of rights, which is a land record, are presumed to be correct as provided under Section 117 of the Code of 1959, until rebutted. In the present case, the defendants have failed to produce any gift deed or documentary evidence in support of their claim of ownership over the suit property. In the absence of such evidence, the claim lacks legal foundation and does not confer any valid title upon them.

19. Since the title of Gangaram over the suit property has remained unchallenged, the revenue entries recorded in the record of rights assume significant evidentiary value. Under Section 117 of the Code of 1959, entries in the revenue records carry a statutory presumption of correctness until the contrary is proved.

20. In the case of “**Kasturchand and Others v. Harbilash and Others**”, 2000 (7) SCC 611, the Hon’ble Supreme Court, in para 16 and 17 of its judgment, held that:-

“16. The entries in annual village papers create presumption albeit rebuttable in favour of a person whose name is recorded. We find that a procedure is prescribed to challenge the entries made in the annual village papers. The procedure is contained in the Madhya Bharat Land Revenue and Tenancy Act of 1950 (for short ‘Land Revenue Act’). Section 45 of that Land Revenue Act specifies that Khasra, Jamabandi or khatoni and such other village papers as the Government may from time to time prescribe shall be annual village papers. Section 46 enjoins preparation of annual village papers each year for each village of a District in accordance with rules made under the Act. Section 52 embodies the presumption that all entries made under that Chapter in the annual village papers shall be presumed to be correct until the contrary is proved and Section 50 prescribes the method or procedure for correction of wrong entries in the annual village papers by superior officers. Thus it is clear that in the event of wrong entries in the annual village papers the same is liable to be corrected u/s 50 and unless they are so corrected the presumption u/s 52 will govern the position.

7. Insofar as Samvat year 2008 is concerned it is

> not in dispute that initially the names of the appellants were recorded. They were subsequently scored off by the Patwari and the name of Gayadeen was entered. There is nothing to show that this correction was made in accordance with the procedure prescribed under Section 50 of the Land Revenue Act. Indeed it is not the case of the respondent that correction was carried out under the said provisions. Therefore, the subsequent entry will be of no consequence and it confers no benefit either on Gayadeen or anybody claiming through him.

21. In the case of "**Vishwasrao Satwarai Naik and others v. State of Maharashtra**" 2018 (6) SCC 580, the Hon'ble Supreme Court has reiterated the rebuttable presumption of entries made in the revenue records and held that:-

> "6. The main ground urged is that since in the earlier proceedings held under the Act, the extent of pot kharab land was found to be 106.24 acres, then in the second ceiling proceedings the extent of pot kharab land could not come down to 28.20 acres. In this behalf, it is urged that the Revenue Authorities have relied upon the revenue entries with regard to the classification of the land and have not actually visited the land to determine which land is cultivable and which land is not

> cultivable. In ceiling proceedings, it is the duty of the owner of the land to show which portion of his land is exempt from ceiling proceedings. In this case, in the return filed on behalf of the owner it was mentioned that only 11.10 acres of land is pot kharab. However, on the basis of the revenue record, the officer assessed the pot kharab land as 28.20 acres. The appellant led no evidence and has not even placed on record the revenue records prior to the earlier ceiling proceedings or the revenue record thereafter, to support his claim that even earlier the land which was declared to be pot kharab, was actually not classified as such in the revenue record. Presumption of truth is attached to the revenue record. No doubt, this is a rebuttable presumption, but it is for the party who alleges that the entries in the revenue record are wrong to lead evidence to rebut this presumption. This, the appellants have miserably failed to do. The appellants have also failed to lead any evidence to show that the revenue entries are wrong."

22. Now, the second part of the claim of the defendant is the gift deed, through which the defendant No. 1 is claiming the property of Gangaram. No gift deed or any other documents have been filed by the defendants in their support that Gangaram has executed the gift deed in

favour of Injoriya Bai in the year 1972. Although the entries have been made in the Sansodhan Panji of the year 1975 (Ex. P-7), the mutation of the name of Injoriya Bai is on the basis of a gift deed of the year 1972, but there is no gift deed produced by them. True it is that the entries made in the revenue records are presumed to be correct, as has been held earlier in this judgment, but the entries made in the document Ex. P-6, record of right, is not disputed by the parties; rather, the title of the property flows from the said record of right, Ex. P-6, but the document of Sansodhan Panji, Ex. P-7 is disputed by the plaintiff, and then the defendant has to prove the transfer of the suit property by a valid gift deed.

23. The “Gift” is one of the modes of transfer of property as defined in Section 122 of the Transfer of Property Act, 1882 (in short “T.P. Act”). Section 123 of the T.P. Act provided the manner to execute the gift deed. From the conjoint reading of both Sections 122 and 123 of the T.P. Act, it is quite vivid that the valid gift can be made through a registered deed only. It is necessary to notice here Sections 122 and 123 of the T.P. Act, which are as below:-

> “**122. “Gift” defined**.—“Gift” is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.
>
> Acceptance when to be made.—Such acceptance

must be made during the lifetime of the donor and while he is till capable of giving,

If the donee dies before acceptance, the gift is void.

123. Transfer how effected.—For the purpose of making a gift of immoveable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

For the purpose of making a gift of moveable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.

Such delivery may be made in the same way as goods sold may be delivered."

24. It is not in dispute that the plaintiffs are the legal heirs of Gangaram and inherited his property. The defendant No. 1 is claiming to be the niece of Gangaram and claims title through a gift deed allegedly executed by Gangaram in the year 1972. No gift deed was produced by the defendant No. 1, and the defendant No. 1 could not be able to prove her alienable title over the suit property. The defendant No. 2 claims her title through the registered sale deed dated 08-04-2011, executed by Injoriya Bai in her favour. When the transfer of the suit property in favour of Injoriya Bai is not proved through a valid source of document, the title could not be transferred in favour of Injoriya Bai, and thus, she was not

competent to alienate the suit property to defendant No. 2, Fuleshwari Bai. The sale deed dated 08-04-2011 executed by Injoriya Bai, in favour of Fuleshwari Bai, is without the alienable title in her favour, and no title could be passed in favour of defendant No. 2 through such sale deed.

25. The settled principles of law are that no person can transfer a better title than he himself possesses (nemo dat quod non habet). Such a transfer cannot convey a better title to another, and such a transfer does not create lawful ownership in favour of the transferee. In the present case, in the absence of any lawful title in favour of the defendants or their predecessors, any alleged transfer in favour of the defendant No. 2 by the defendant No. 1 would not confer title upon her. Therefore, unless the defendants establish that their transferor had a legal, enforceable and subsisting title over the suit property, their claim of ownership cannot be sustained in the eyes of the law.

26. It is a settled and fundamental principle governing transfer of property that no person can convey a better title than he himself possesses (*nemo dat quod non habet*). The Hon'ble Supreme Court in **Rame Gowda (Dead) by LRs v. M. Varadappa Naidu (Dead) by LRs,** (2005) 12 SCC 77, while dealing with competing claims of title and possession, has reiterated that a person who does not have lawful title cannot pass any better title to another. The transferee merely steps into the shoes of the transferor and can acquire only such right, title and interest as the transferor lawfully possessed. If the transferor's title is defective or non-existent, the transferee does not acquire any valid ownership notwithstanding execution of a registered instrument.

27. Similarly, in **Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana**, (2007) 2 SCC 404, the Hon'ble Supreme Court underscored that immovable property can be legally transferred only in the manner recognized by law and that mere execution of documents by a person lacking valid title does not create or convey ownership. It was emphasized that transfer of property presupposes existence of lawful and transferable interest in the transferor. In absence thereof, the transaction remains ineffectual in conferring title upon the transferee.

28. Applying the aforesaid principles to the facts of the present case, when defendant No.1 has failed to establish acquisition of valid title through a legally executed and proved gift deed from Gangaram, she did not possess any lawful or alienable interest in the suit property. Consequently, the subsequent sale deed executed by her in favour of defendant No.2 could not convey any better title than what she herself had. The registered sale deed dated 08.04.2011, therefore, does not create or vest ownership in favour of defendant No.2 in the absence of a valid antecedent title in the vendor.

29. In the present case, the acquisition of title by Gangaram through the allotment of land in Ceiling Proceeding has not been challenged by the defendants. The said allotment of land was only with respect to Kh. No. 15 (new Kh. No. 11), area 1.00 acre, as reflected from the document of record of right Ex. P-6. Though there is no document that the father of the plaintiffs also acquired the property of Kh. No. 28 (new Kh. No. 135) area 0.105 Hect., but the entries of the Sansodhan Panji Ex. P-7 shows that both these lands were transferred to Injoriya Bai by Gangaram, through the alleged gift deed in the year 1972. It is not the case of the

defendants that Gangaram was not the owner of the land of Kh. No. 28 (new Kh. No. 135), and it was the property of Ram Prasad. Both the lands are admittedly owned by Gangaram, but there is no valid deed of transfer in favour of the defendant No. 1, and therefore, the alienable title of defendant No. 1 has not been proved. Further, the alienation by defendant No. 1 in favour of defendant No. 2 also found to be without any lawful authority to alienate the property and no title can be conveyed through the sale deed.

30. On the other limb of argument that, the suit of the plaintiffs is barred by limitation and the learned trial Court has observed in its judgment and decree that, the defendants are in possession of the suit land since 1975 and even when, the father of the plaintiffs came out from the jail in the year 1984, he has not raised any objection and the suit has been filed in the year 2011, which is barred by limitation, it transpires that the learned trial Court has observed in its judgment that the suit of the plaintiffs appears to be barred by limitation. In the plaint, the plaintiffs have pleaded that, cause of action arose on 08.04.2011, when the sale-deed was executed in favour of the defendant No.2 and also when the name of Injoriya Bai was mutated on the basis of forged deed by Ramprasad. The plaintiff Shiv Kumar/PW-1 has stated in his evidence that, Gangaram had gone to jail in the year 1973. After releasing from jail, he disclosed that, he has not executed any gift deed in favour of anyone. He came out from the jail in the year 1984-85. During his lifetime, Gangaram has not raised any objection on the said gift deed. Injoriya Bai has given the land to Ramprasad in adhiya cultivation and after death of Ramprasad, Injoriya Bai is in possession of the land. He

is residing at village Turimar from his birth. He admitted that in the year 1984, when his father came out from the jail, he disclosed that, he has not executed any gift deed in favour of Injoriya Bai. When this witness has stated that, his father has denied the execution of any gift deed in the year 1984, when he came out from the jail, it means that the plaintiffs and their father Gangaram came into knowledge of the gift deed and mutation of Injoriya Bai and she was in possession of the land. The plaintiffs have not specifically pleaded, as to when they came to know about gift deed and when Injoriya Bai came into possession of the suit land, whereas the revenue records (exhibit P-7) filed by the plaintiffs shows that, the land was recorded in the name of Injoriya Bai in the year 1975. There is pleading in the written statement by the defendants that, the plaintiffs were in knowledge of mutation of the name of Injoriya Bai and execution of gift deed by Gangaram, the suit filed in the year 2011 is barred by limitation. Despite raising objection in the written statement with respect to limitation period of the suit, it transpires that no issues have been framed by the learned trial Court, though the learned trial Court has observed in para 13 of its judgment that, suit of the plaintiffs appears to be barred by limitation.

31. From perusal of the judgment and decree passed by learned First Appellate Court, it further transpires that there is no consideration by the learned First Appellate Court with respect to the observation made by learned trial Court regarding the limitation period to file the suit. When the learned trial Court observed in para 13 and 14 of its judgment that the suit itself is barred by limitation, that has to be considered in the first appeal filed by the plaintiffs, as to whether the suit is barred by limitation

or not, although no issue has been framed by the trial Court.

32. Section 3 of Limitation Act provided that, the suit instituted after the prescribed period of limitation shall be dismissed, although the limitation has not been set up by the defence. In the present case, the limitation was set up as a defence in the written statement, but no issues have been framed and despite having observation made by the learned trial Court in its judgment, the learned First Appellate Court has not considered the limitation period of the suit, and therefore, on this ground also, the impugned judgment and decree passed by learned First Appellate Court appears to be erroneous.

33. Accordingly, the substantial question of law No.1 is answered in favour of the plaintiffs that the learned First Appellate Court rightly reversed the finding of the trial court by holding that the plaintiffs have acquired their right and title over the suit property by the Adhikar Abhilekh (exhibit P-6).

34. With respect to substantial question of law No.2, it is answered that the learned First Appellate Court has erred in passing the judgment and decree in favour of the plaintiffs without considering the finding of limitation to file the suit, given by the trial Court, which has been raised by the defendants in their written statement also, and therefore, the judgment and decree passed by the First Appellate Court is not sustainable.

35. Accordingly, the second appeal is **partly allowed**. The finding recorded by the First Appellate Court on merits are affirmed with certain modifications as has been discussed hereinabove. Since the First

Appellate Court has not adjudicated upon the issue of limitation, which goes to the root of the matter, the impugned judgment and decree are set aside to that limited extent. The matter is remanded to the First Appellate Court for the limited purpose of deciding the issue of limitation in accordance with law, after affording opportunity of hearing to the parties. The first appellate court shall decide the appeal afresh on the question of limitation and pass an appropriate judgment and decree.

36. The parties are directed to appear before the learned First Appellate Court on **10th of March, 2026**.

37. Parties to bear their own costs.

Sd/-
(Ravindra Kumar Agrawal)
Judge

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