

IN THE COURT OF DISTRICT JUDGE, CHITRAKOOT

Present – Shesh Mani..... H.J.S.

UPCH010011382024



Regular Civil Appeal No.-13/2024

1. Jawahar Lal son of Indra Bhawan (died during pendency of suit) through legal representatives,
 - 1/1- Arjun Singh, aged about 35 years, son of Jawahar Lal
 - 1/2- Ram Mohan Singh, aged about 37 years, son of Jawahar Lal
2. Shyamlal, aged about 55 years, son of Indra Bhawan
3. Samaylal, aged about 50 years, son of Indra Bhawan

All residents of village Chakwa, Majra Khandeha, Tehsil Mau, District Chitrakoot.

.....(Appellants/Plaintiffs)

Versus

- 1- Indra Kunwar son of Shiv Govind (died during pendency of suit) through legal representatives
 - 1/1- Phoolchandra, aged about 55 years, son of Indra Kunwar
 - 1/2- Babbu @ Ramesh Singh, aged about 50 years, son of Indra Kunwar
 - 1/3- Indresh Singh, aged about 42 years, son of Indra Kunwar
 - 1/4- Shivrani wife of Indra Kunwar (died about 5 years ago during lower court proceedings),
- 2- Kudhiya, widow of Indra Bhawan (died during pendency of suit)
All residents of village Chakwa, Majra Khandeha, Tehsil Mau, District Chitrakoot.

.....(Respondents/Defendants)

JUDGEMENT

THE APPEAL

1. The present Regular Civil Appeal has been preferred under Section 96 read with Order XL1 Rule 1 of the CPC against the judgement dated 21.03.2024 and decree dated 04.04.2024 passed in Original Suit No. 6 of

2011 Jawahar Lal & Others vs. Indra Kunwar and another, whereby the learned Civil Judge (J.D.), Mau, Chitrakoot has dismissed the suit.

BRIEF RESUME OF FACTS

2. The facts giving rise to the present appeal are that plaintiffs (appellants herein) filed a suit no. 6 of 2011, Jawahar Lal and others vs. Indra Kunwar and another, seeking relief of cancellation of sale deed dated 27.11.1969 executed by the mother and the natural guardians of the plaintiffs.

3. In the plaint, it is stated that disputed property comprising plot no. 4676 area 10 bigha 14 biswa, plot no. 25/2 area 2 bigha 3 biswa, plot no. 1820 area 11 biswa, plot no. 1821 area 15 biswa and 1057 area 1 bigha 19 biswa, is situated in village Khandeha, Tehsil Mau, District Chitrakoot. The disputed land is stated to be ancestral property of the plaintiffs. Earlier, the ancestor Indra Bhawan of the plaintiff was owner in possession of the disputed land. The plaintiffs inherited the said land by way of succession. At the time of death of tenure holder Indra Bhawan, plaintiffs Jawahar Lal, Shyamlal and Samaylal were minor. Their mother, Kudiya, was taking care of them. She was an illiterate lady and doing domestic works. She had no knowledge of legal or governmental documentation. Defendant No. 1 is a clever person. After the death of Indra Bhawan, in order to grab his property by means of fraud and collusion, he got sale deed executed in his favour in order to cause damage to plaintiffs. Defendant also obtained thumb impression of the mother of the plaintiffs without her knowledge. No valid agreement took place in regard to the sale of the disputed land and also no consideration was given to the mother of plaintiffs. In the sale deed, it is wrongly recorded that Rs 1,000/- was given to the mother of the plaintiff prior to the registration. The plaintiffs were unaware of the execution of the deed since the land was in the possession of the plaintiffs and defendant never objected in this regard or disclosed the existence of the sale deed. The plaintiff first time came to know about the sale deed in the month of July, 2010 during the consolidation operation, when the Lekhapal apprised them about the entries prepared in favour of Defendant no. 1. The sale deed in question is liable to be cancelled on following grounds:

- a) The sale deed of the disputed land owned by the minors was executed without prior permission of the District Judge.

- b) No valid consideration was given in regard to the execution of the sale deed.
- c) The sale deed was executed without the knowledge and consent of the mother of the plaintiffs.
- d) The sale deed in regard to the disputed land is against the interest of the plaintiffs.
- e) In lieu of the execution of the sale deed, the ownership and possession was illegally transferred in favour of Defendant no. 1.

4. On the basis of the averments made herein above, the plaintiffs prayed for the cancellation of the sale deed dated 27.11.1969, alleged to have been executed by the mother and natural guardian of the plaintiffs.

5. Defendant no. 1 filed a written statement paper no. 44 Ka/1, wherein he admitted the averments made in the paragraph no. 1 of the plaint and stated that Defendant Indra Kunwar son of Shiv Govind, Sri Ram son of Darshan, Jawahar Lal, Shyam Lal and Samay Lal sons of Indra Bhawan (minors), were recorded in the revenue records as tenure holders prior to the execution of the sale deed dated 27.11.1969. Kudhiya, the mother of the plaintiffs who was also natural guardian of the minors, was in need of money for their maintenance and education of the minors. Therefore, she sold the land and executed the sale deed dated 27.11.1969 in favour of Defendant No. 1 for a consideration of Rs. 1,000/-, with her free consent and without any pressure. The name of the defendant was also mutated in the revenue records by the competent Revenue Court. On the basis of sale deed dated 27.11.1969, the defendant became the lawful owner in possession of the disputed land. Prior to mutation, a public declaration required to be issued and every person has right to file the objection. The plaintiff did not file any objection or suit before the Revenue Court since the execution of the sale deed 27.11.1969. The sale deed dated 27.11.1969 is a valid document, which was executed after payment of consideration and without any fraud. At the time of execution of sale deed dated 27.11.1969, plaintiffs Jawahar Lal was 16 years old, Samay Lal was 12 years old and Shyam Lal was 9 years old. They have filed the suit for cancellation of the sale deed after 41 years, therefore, the suit is time barred, as it ought to have been filed within 3 years from the date of attaining majority. The consolidation proceeding was initiated and published prior to the year 2000.

Assessment and measurement were carried out, and publication was made under Section 9 Ka. The plaintiffs were fully aware of the entire proceedings. They have falsely stated that they came to know about the entry of the name of the defendant in the year 2010. The transfer was made for the purpose of maintenance and education of the minors, therefore, the permission is not required. The suit is barred under Section 331 of the Uttar Pradesh Zamindari Abolition and Land Reforms (UPZALR) Act of 1950. The suit is also barred by Section 5 of the U.P. Consolidation of Holdings Act, 1953 and Section 34 and 41 of Specific Relief Act, 1963. On the grounds of the facts narrated in the written statement paper no. 44 Ka, a prayer has been made for the rejection of the plaint.

6. Kudhiya, the mother of the plaintiffs has been impleaded as defendant no. 2 in the present suit. She filed written statement paper no. 13 Ka/1-4, wherein she admitted the plaint version and supported the plaintiffs case. She has also stated that Defendant no. 1 and her husband are real brothers. The plaintiffs were the minors, therefore, Defendant no. 1 was the sole responsible and head of the family after the death of her husband. Defendant No. 1 is the only person who was taking care of the entire documents related to the land. She did domestic work and used to cultivate the land of her husband's share and maintained her minor children from it, which was sufficient for taking care of her minor children, therefore, there was no need to sell the ancestral property of plaintiffs. She had neither entered into any agreement with Defendant No. 1 in regard to the sale deed of the disputed land nor Defendant No. 1 informed her in regard to the sale deed. She is an illiterate, so if her thumb impression was taken by Defendant No.1 anywhere, it was taken by fraud. No permission was taken by her from any authority for selling the land. The payment of execution of the sale deed of the disputed land is false and fabricated. She never received any money and never executed or registered any sale deed. After her husband's death, the plaintiffs got legal ownership and possession of the land. She continued farming on it, and after becoming adults, the plaintiffs themselves started farming and are still in possession. The possession of the land was never given to Defendant No. 1. The statement in the sale deed of the disputed land about transfer of possession is false and wrong.

7. On the basis of the pleadings exchanged between the parties, the issues were framed in Hindi Devanagari Script, the same are reproduced here under after translation in English:

1. Whether the plaintiffs are the tenure holders in possession of the disputed land?
2. Whether the plaintiffs are entitled to get the disputed sale deed cancelled on the grounds stated in the plaint?
3. Whether the valuation of the suit made by the plaintiffs is proper and the court fee paid is insufficient?
4. Whether the suit is barred by Section 331 of the U.P. Zamindari Abolition and Land Reforms Act?
5. Whether the suit is barred by Section 5 of the U.P. Consolidation of Holdings Act?
6. Whether the suit is barred by Sections 34 and 41 of the Specific Relief Act?
7. Whether the plaintiffs are entitled to any other relief?
8. Whether the present suit is barred by limitation under Sections 5 of the Limitation Act?

8. In support of their case, the plaintiffs has examined Jawahar Lal as PW-1 in oral evidence. Plaintiff produced in documentary evidence vide list of document bearing paper no. 7 Ga/1, two documents, which includes certified copy of the sale deed dated 27.11.1969 (Paper No. 8 Ga/1), Inspection receipt (Paper No. 9 Ga/1). Through list bearing paper no. 33 Ga/1, discharged certificate of Jawahar Lal from hospital (Paper No. 34 Ga/1) and Medical treatment slips (Paper No. 35Ga/1- 39Ga/1).

9. On behalf of the defendants, Babbu Singh @ Ramesh Singh was examined as D.W.-1 in oral evidence. The defendants has filed documentary evidence through list bearing paper no. 31 Ga/1, which includes original death certificate of Indra Kunwar (Paper No. 32Ka/1). In addition, filed documents through list bearing paper no. 63 Ga/1, which includes copy of Khatauni (Paper No. 64 Ga/1) and copy of Khasra (paper no. 65 Ga1/1- 65 Ga1/11).

10. After hearing the parties and going through the record, the Learned Civil Judge (J.D.), Chitrakoot, vide judgement dated 21.03.2024 and

decree dated 04.04.2024, dismissed the suit. Feeling aggrieved with the said judgment and decree, the plaintiffs (appellants herein) have preferred the present appeal.

11. In the appeal, it is stated that the learned Trial Judge has committed illegality in passing the judgement and decree dated 21.03.2024. Defendant no. 4, Shivrani, wife of Indra Kunwar, had died five years ago from the date of the judgement, therefore, the decree is a nullity. The opportunity of argument was not provided to the parties and without hearing the oral argument, the impugned judgement was passed. Father of the plaintiffs, Indra Bhawan and Defendant no. 1, Indra Kunwar, were real brothers and both the brothers were members of joint Hindu family. The father of the plaintiffs had died prior to the execution of the sale deed. After the death of Indra Bhawan, Defendant no. 1, Indra Kunwar, became the head of the joint Hindu family, under whose protection the minor sons of Indra Bhawan and his widow, Kudhiya, were living. Kudhiya was an illiterate and pardanashin lady. The sale deed was got executed by deceiving her. The said sale deed was executed without obtaining prior permission as required under Section 8(2) of the Hindu Minority and Guardianship Act, 1956, and therefore, in view of Section 8(3) of the Hindu Minority and Guardianship Act, 1956, the sale deed is a voidable document. The sale deed was not within the knowledge of Kudhiya during her lifetime. The sale deed is based on fraud in regard to which the plaintiff came to know during the consolidation proceedings when the Lekhpal apprised them. Thereafter, upon inspection of the records, the plaintiffs came to know about the existence of the sale deed. On the grounds stated in the memo, the prayer has been made for set aside the judgement and decree dated 21.03.2024.

12. Phoolchandra, Babbu @ Ramesh Singh and Indresh Singh as Respondent nos. 1/1, 1/2 and 1/3 respectively, filed written statement paper no. 26Ga/2, wherein they denied the contents of paragraph 1 to 14 of the appeal plaint. The judgement and decree dated 21.03.2024 passed by the learned Trial Court are legal and based on proper appreciation of evidence of both parties. Therefore, the appeal filed by the appellants is liable to be dismissed. Respondent no. 1/4, Shivrani, wife of Indra Kunwar, who was the mother of Respondent nos. 1/1, 1/2 and 1/3, had died prior to the judgement dated 21.03.2024. Her legal heirs are only Respondent nos. 1/1, 1/2 and 1/3 and there are no other legal heirs.

Respondent nos. 1/1, 1/2 and 1/3 were already parties as defendants before the Trial Court and had filed their written statements and evidence. The impugned judgement dated 21.03.2024 has been passed after detailed consideration of the pleadings and evidence. Several opportunities had been given by the learned Trial Court for arguments, but the appellants and their counsel remained absent. The judgement passed by the learned Trial Court is based on the evidence of both parties, which does not suffer from any legal infirmity. The averment made in paragraph 7 of the appeal, that Indra Bhawan and Defendant No. 1 Indra Kunwar were real brothers is totally false. As per the copy of the Khatauni, which contains the mutation order, the father's name of Indra Kumar is shown as Shiv Govind and the father's name of Indra Bhawan is shown as Sarjo Prasad, which clearly proves that Indra Kunwar and Indra Bhawan were not real brothers. They belong to the same caste. Smt. Kudhiya who is mother of appellants/plaintiffs and is their natural guardian was selling the disputed land for meeting her daily expenses and maintaining her children and their educational requirements. On getting this information, respondent's father paid Rs. 1000/- as sale consideration got sale deed executed in Sub-Registrar Office Karwi in presence of witnesses Shriram and the sale deed was executed without any fear and pressure. The sale deed in question was executed by Kudhiya for betterment of her children and the sale deed in question is fully legal and valid. At the time of the execution of the sale deed, plaintiffs Jawahar Lal was 16 years old, Samay Lal was 12 years old and Shyam Lal was 9 years old and despite attaining majority they had not challenged the sale deed within 3 years limitation period. Kudhiya and her children had all the knowledge from the date of execution of sale deed. The appeal is thus liable to be dismissed.

13. I have heard Sri B. B. Singh, learned counsel for the appellants, Sri Amit Kumar Mishra, learned counsel for the respondents, and perused the record.

CONTENTIONS OF THE PARTIES

14. Sri B. B. Singh, learned counsel for the appellants, submits that plaintiffs Jawahar Lal, Shyam Lal and Samay Lal became owners of the property in dispute after the death of their father Indra Bhawan. At the time of the death of Indra Bhawan, plaintiffs were minors. Plaintiffs'

mother Kudhiya, being a natural guardian of the minors, was taking their care. She was an illiterate and pardanashin lady. The sale deed dated 27.11.1969 was executed by the defendant, Indra Kunwar, by playing fraud, who belongs to the same family. In as much as the plaintiffs were minors at the time of the execution of the sale deed, therefore prior to execution of the sale deed, the permission was required under Section 8 of the Hindu Minority and Guardianship Act, 1956. Due to want of permission as required under the law, the alleged sale deed dated 27.11.1969 is voidable. Sri B. B. Singh learned counsel further submits that the plaintiffs were not aware about the alleged sale deed dated 27.11.1969, during the consolidation operation in the year 2010, when spot inspection and preparation of the initial consolidation papers were going on, plaintiffs came to know about the sale deed dated 27.11.1969 and thereafter, the suit was filed with the prayer of cancellation of sale deed and permanent injunction.

15. Sri Amit Mishra, learned counsel for the respondents, submits that the sale deed dated 27.11.1969 was executed by the mother and natural guardian of the plaintiffs with her free consent, without any influence, and after taking due consideration as provided in the sale deed dated 27.11.1969. The sale deed was executed in bona fide manner for the purpose of the legal necessity and for indispensable duties, therefore, the permission was not required. Sri Amit Mishra further submits that the present suit has been filed after 41 years from the date of execution of sale deed which is time barred. He furthermore submits that after the execution of the sale deed, the name of the defendants was mutated in the revenue records. The possession was handed over immediately after the execution of the sale deed and defendant is owner in possession of disputed land as stated in the paragraph 1 of the plaint.

ANALYSIS

16. Upon hearing, the learned counsel for the parties, the moot questions for the consideration in this appeal are:

1. Whether the mother and natural guardian of the minors (plaintiffs) had executed sale deed in respect of the disputed land without the Court permission, and if yes, what is its effect?
2. Whether the decree is in nullity on account of the death of Defendant no. 1/4, Shivrani, prior to the passing of the judgement?

3. Whether suit is time barred?
4. Whether the sale deed was executed by playing fraud?
5. Whether no consideration was given to the seller either before or after the execution of the sale deed.
6. Whether the appeal is liable to be allowed only on the grounds that an opportunity of argument was not provided to the learned counsel of the parties?

17. Now, the court moves to analyze the points of determination serially.

Point no.-1

18. It is to be determined under this point as to whether the mother and natural guardian of the minors (plaintiffs) had executed sale deed in respect of the disputed land without the Court permission, and if yes, what is its effect?

19. It is admitted that Plot nos. 4676 area 10 bigha 14 biswa, 25/2 area 2 bigha 3 biswa, 1820 area 11 biswa, 1821 area 15 biswa and 1057 area 1 bigha 19 biswa, is situated in village Khandeha, Tehsil Mau, District Chitrakoot in respect of which alleged sale deed dated 27.11.1969 is said to have been executed. It is also admitted that Indra Bhawan was the owner of aforesaid plot and after his death plaintiffs became the owner of the said property.

20. From the perusal of the certified copy of the sale deed paper no. 8 Ga/1 and 8 Ga/2, it reveals that the sale deed was executed by the mother and natural guardian of the minors (plaintiffs). In the said deed, it is also stated that she is in need of money for the maintenance etc. As per contents of the sale deed, the sale deed was executed for consideration Rs. 1,000/- and possession was given to the purchaser/vendee Indra Kunwar.

21. In order to answer the above question of law and facts, it would be beneficial to refer and quote the relevant provisions of Section 8 of the Hindu Minority and Guardianship Act, 1956. The relevant provisions are sub-Section (2) and sub-Section (3) of the Section 8 of the Act, which are being reproduced herein below:

“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 realisation, 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."

22. A simple reading of the aforesaid provisions makes it abundantly clear that a natural guardian of a minor has no authority in law to mortgage, sell, gift or otherwise transfer any part of the immovable property of the minor or even to lease out 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 without the prior permission of the court. Therefore, prior permission of the court is a *sine qua non* for a guardian of a minor to transfer the property of the minor in any of the manners provided under sub-Section (2) of Section 8 of the Act.

23. Sub-Section (3) of Section 8 of the Act in unequivocal terms provides that the disposal of any immovable property by the 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. In other words, if the natural guardian or a minor disposes of the immovable property of a minor in contravention of sub-Section (1) and sub-Section (2) particularly without the permission of the court, such a transaction would be voidable at the instance of the minor.

24. The aforesaid provision, however, nowhere categorically provide the manner in which such a transaction of disposal of the property of a minor by a guardian without the permission of the court would be a voidable. Such a transaction can be avoided or repudiated by the minor expressly by filing a suit for the cancellation of such a transaction or

impliedly by his conduct namely by transferring the property himself on attaining the majority within the time prescribed. The avoidance of such a transaction by conduct appears to be permissible for two reasons. First, at times the minor may not be aware of such a transaction and as such may not be in a position to institute any suit; secondly, the transaction of such a nature, if any, may not have been given effect to and the party acquiring right in the property may not be having possession of the property giving an impression that the property is intact in the hands of the minor, in which case also the minor on attaining majority may not deem it proper to institute a suit.

25. 'Travellyan' in his well-known book on Minors 5th Edition, on Page No.202 stated:

“A transaction which is voidable at the instance of the minor may be repudiated by any act or omission of the late minor, by which he intends to communicate the repudiation, or which has the effect of repudiating it, for instance, a transfer of land by him avoids a transfer of the same land made by his guardian before he attained the age of majority. It is not necessary that he should bring a suit.”

26. Mulla's Hindu Law, 12th Edition, on Page No.276 observes as under:

“An alienation made by a Hindu widow.....without legal necessity and without the consent of the next reversioners is voidable at their option. They may affirm it, or treat it as a nullity without the intervention of a court, and they show their election to do the latter by commencing an action to recover possession of the property.”

27. Both the above texts indicate that the transfer which is voidable, can be repudiated by the minor on attaining majority by his action and not necessarily by the intervention of the court.

28. In a century and quarter old case of **Abdul Rahman vs. Sukhdayal Singh (1905) SCC online All 106**, a property of the minor was leased out by the guardian but not for the benefit of the minor. The minor sold the property on attaining majority. The Hon'ble Apex Court

observed that it is not necessary that a suit should be instituted to set aside the lease which was executed by the guardian of the minor and that the act of the minor of selling the property on attaining majority is enough to repudiate the lease deed.

29. In *Nangali Amma Bhavani Amma vs Gopalkrishnan Nair and Ors. (2004) 8 SCC 785*, the Hon'ble Apex Court while holding that a transaction entered into by the guardian of a minor in violation of Section 8 (2) of the Hindu Minority and Guardianship Act, 1956, is voidable at the instance of the minor and is not void and that the minor can avoid the same on attaining majority.

30. In view of the statutory provisions as well as the judgment rendered by the Hon'ble Apex Court, it is established that the sale deed dated 27.11.1969 is executed by the mother and the natural guardian of the minors is voidable document, since permission required under Section 8 of the said Act was not obtained from the court having jurisdiction.

31. The learned trial court has recorded findings that suit for cancellation of sale deed can only be filed by the party to the instrument. In the present suit, the mother of plaintiffs, who is said to have executed the registered sale deed, is arrayed as defendant and not plaintiff. It is established from the record that the sale deed in question was executed by the mother of the plaintiffs in the capacity of natural guardian. In view of statutory provisions contained under section 8 as well as Judgment rendered by Hon'ble Supreme Court, as stated above, the sale deed is voidable at the instance of minor. The minors are totally eligible under the law to institute a suit of cancellation of sale deed which is executed by their natural guardian. The finding in this regard by the learned trial judge is contrary to the statutory provisions, as well as the law laid down by the Hon'ble Supreme Court. **Point No.-1 is thus decided accordingly.**

Point No. 2

32. Under this point, it is to be determined as to whether the decree is in nullity on account of the death of Defendant no. 1/4, Shivrani, prior to the passing of the judgement?

33. The learned counsel for the appellant submits that the Defendant No. 1/4 Shivrani wife of Indra Kunwar died about 5 years ago, during the proceedings before the Trial Court, therefore, the decree is in nullity.

34. From the perusal of the record, it reveals that it was Shivrani wife of Indra Kunwar in whose favour sale deed was executed on 27.11.1969. During proceedings before the Trial Court, Defendant No. 1, Indra Kunwar died and his legal heirs were brought on record. The legal heirs of the Shivrani were already on record. The question of abatement of suit arise only when on account of death of defendant, right to sue does not survive.

35. In the present matter, there are several defendants, who are legal heirs of Defendant No. 1 Indra Kunwar, even after the death of his wife her legal heirs are already on record, therefore, in view of the statutory provisions contained under Rule 4 of Order XXII of the C.P.Cs, the question of abatement of the suit does not arise. Moreover, the step to take necessary correction/ amendment/ substitution lies upon the plaintiff. It is also necessary to mention here that the defendants are resident of same village, where plaintiffs reside. The plaintiffs were well aware of the facts that Shivrani had died but they did not take any steps for necessary amendment in the plaint. Now, the plaintiffs/appellants want to take the advantage of their own mistake which is not legally permissible. The argument in this regard submitted by the learned counsel for the appellants is not sustainable in eye of law. **Point no. 2 is decided accordingly.**

Point No. 3

36. It is to be determined here as to whether suit is time barred?

37. The Hon'ble Supreme Court in the case of *Nangali Amma Bhavani Amma vs Gopalkrishnan Nair and Ors. (2004) 8 SCC 785*, relying upon *Vishwambhar and Ors. Vs Laxminarayan (Dead) through Lrs. and Anr. 6 (2001) 6 SCC 163*, observed that a suit must be filed by the minor in order to avoid transaction within the period prescribed under Article 60 of the Indian Limitation Act, 1963.

38. Article 60 of the Indian Limitation Act, 1963, provides limitation period of 3 years for cancellation of deed from the date of a ward attains majority. In the present manner, the suit was instituted on 07.01.2011, the sale deed was executed on 27.11.1969. In paragraph 19 of the written statement 44 Ka/3, there are specific pleadings that at the time of the execution of the alleged sale deed, plaintiffs Jawahar Lal was 16 year old, Samay Lal was 12 years old and Shyam Lal was 9 years old. Thus, it is

evident from the record that the present suit for cancellation of the sale deed dated 27.11.1969 was filed about after three decades from its execution. The learned counsel for the appellants has taken plea that the plaintiffs as well as their mother were not aware about the execution of the sale deed dated 27.11.1969, therefore, the suit could be filed within the period prescribed under Article 60 of the Indian Limitation Act, 1963. Certainly this part of the argument in regard to the knowledge is a matter of facts. PW-1 Jawahar Lal in his cross-examination has stated that earlier he was in possession of the disputed land. Defendant came in possession of the disputed land when holding was demarcated and carved out. Thus, it is clear from the statement of PW-1 that he is not in possession of disputed land. In the paragraph 3 of the plaint, it is stated that the disputed land is ancestral property. Earlier, father of the plaintiffs, Indra Bhawan, was owner and in possession of land and after his death, plaintiffs became the owner by virtue of succession. In the paragraph 7 of the plaint, it is further stated that the defendant never objected over the possession of the plaintiffs upon the disputed land. The statement of the plaintiff is not in consonance with the plaint.

39. The alleged sale deed is a registered document, therefore, it shall be presumed that document is genuine unless otherwise is proved. From the evidence available on record, it is established that the suit for cancellation has not been filed within three years by the plaintiffs after attaining the majority, as required under Article 60 of the Indian Limitation Act, 1963. It is also not proved that plaintiffs came to know about the sale deed in question in the year 2010. Therefore, the present suit is time barred. **Point No.-3 is thus decided accordingly.**

Point Nos. 4 and 5

40. Now, it is to be determined as to whether the sale deed was executed by playing fraud and whether no consideration was given to the seller either before or after the execution of the sale deed.

41. It is stated that the mother of the plaintiffs was an illiterate and pardanashin lady, and document was got executed by the Defendant No. 1, Indra Kunwar, by playing fraud, and no consideration was paid.

42. Section 60 of the Registration Act, 1908 mandates that once the legal requirements (under Sections 34, 35, 58 and 59) are met, the Registering Officer must endorse a (registered) certificate on the

document. These certificates, signed and dated, confirm the documents registration including the specific book, number and page. The formality as required under Section 60 was made at the time of the registration of the sale deed dated 27.11.1969. In the sale deed, there is a specific mention of the consideration. There is nothing on record which may lead to show that the sale deed dated 27.11.1969 was executed by playing fraud upon the mother of the plaintiffs. It is also not proved that consideration was not paid.

43. Keeping in view the entire facts and circumstances as well as the evidence available on record, it is found that plaintiffs have failed to prove that sale deed dated 27.11.1969 was executed by playing fraud and without payment of consideration. **Point Nos. 4 and 5 accordingly are disposed of against the plaintiffs.**

Point No. 6

44. Under this point it is to be determined that as to whether the appeal is liable to be allowed only on the grounds that an opportunity of argument was not provided to the learned counsel of the parties?

45. The learned counsel for the appellants, Sri B. B. Singh, has vehemently submitted that the opportunity for argument was not provided therefore the impugned judgement is liable to be set aside. The learned counsel for defendants has admitted during course of argument that several opportunities were given for arguments.

46. From the perusal of the order sheet of the Original Suit No. 6 of 2011, it transpires that on 17.08.2022, the learned counsel for the defendant made endorsement to this effect in the order sheet that he does not have to adduced any oral evidence, thereafter the case was continuously fixed for the argument. The case was fixed for argument on 05.09.2022, 13.09.2022, 26.09.2022, 11.10.2022, 31.10.2022, 21.11.2022, 05.12.2022, 07.12.2022, 10.01.2023, 11.01.2023, 08.02.2023, 17.02.2023 & 28.02.2023. Vide order dated 28.02.2023, one opportunity was provided for argument in the interest of the justice. Further, vide order dated 28.07.2023, the last opportunity was given for written argument, on 09.08.2023 again the last opportunity was given to both the parties for written argument and thereafter on 23.08.2023, 02.09.2023, 16.09.2023, 18.10.2023, 06.11.2023, 28.11.2023, 05.01.2024, 31.01.2024, 28.02.2024, 04.03.2024, 07.03.2024,

14.03.2024 continuously the opportunity for argument was given to the learned counsel for both the parties but they did not avail the opportunity. Ultimately, vide order dated 18.03.2024, the learned trial court fixed the date for the judgment and finally the judgment was passed on 21.03.2024. Thus, it clearly reflects that several opportunities were given to the learned counsel for both the parties for the oral submissions/arguments but they did not avail those opportunities. Record also reflects that considerable delay was caused in oral submission and thereby delay occurred in disposal of the Civil Suit which was pending for more than one decade.

At the stage of appeal, learned counsel for parties made submissions at length.

47. In view of the above facts and circumstances, this Court is of considered view that impugned judgment dated 21.03.2024 was passed on the basis of the pleadings exchanged between the parties and oral as well as documentary evidence available on record. The impugned judgment is not liable to be set aside on the ground of not availing the opportunity of argument. **The point no. 6 is decided accordingly.**

48. Thus it is held that the sale deed dated 27.11.1969 is executed by the mother and the natural guardian of the minors is voidable document, since permission required under Section 8 of the said Act was not obtained from the court having jurisdiction. Even after the death of defendant no. 1/4 Shivrani her legal heirs are already on record therefore in view of the statutory provisions contained under Rule 4 of Order XXII, the question of abatement of the suit does not arise. The suit is time barred also. It is also held that the plaintiffs have failed to prove that sale deed dated 27.11.1969 was executed by playing fraud and without payment of consideration and it is also held that the impugned judgment is not liable to be set aside on the ground that opportunity of argument was not given.

49. Sequitur of above discussions, is that learned trial Court has not committed any factual or legal error, therefore, no interference is required in the matter. Appeal sans merit and is liable to be dismissed.

ORDER

Regular Civil Appeal No. 13 of 2024, titled Jawaharlal & Others Vs. Indra Kunwar and Others is hereby dismissed and impugned judgement

dated 21.03.2024 and decree dated 04.04.2024 passed by learned Civil Judge (Junior Division) Mau, District Chitrakoot, is hereby confirmed. No order as to costs.

Dated: 23.03.2026

(Shesh Mani)
District Judge
Chitrakoot
J.O. Code- UP 5751

Judgment signed, dated and pronounced today by me in open Court.

Dated: 23.03.2026

(Shesh Mani)
District Judge
Chitrakoot
J.O. Code- UP 5751