

IN THE HIGH COURT OF JHARKHAND AT RANCHI

S.A. No. 83 of 2023

- 1. Vijay Kumar Yadav @ Ghosh, Aged about 63 years
 - 2. Pradeep Kumar Yadav @ Ghosh, Aged about 55 years
 - 3. Ramanand Yadav @ Ghosh, Aged about 53 years
 - 4. Devanand Yadav @ Ghosh, Aged about 50 years
- All sons of Late Surya Naryan Ghosh, r/o Kasim Bazar, P.O. & P.S. Rajmahal, District Sahibganj

... .. **Defendants/Appellants/Appellants**
Versus

- 1. Shanti Ghosh, wife of Dhananjay Yadav @ Ghosh, r/o Matiyal, P.O. & P.S. Rajmahal, District: Sahibganj
- ... **Plaintiff/ Respondent 1st Party/Respondent 1st party**
- 2. Nimai Ghosh, son of Anand Lal Ghosh
 - 3. Mukesh Kumar Ghosh, son of Nimai Ghosh
 - 4. Rajesh Kumar Ghosh, son of Nimai Ghosh
 - 5. Nibha Ghosh, D/o Niami Ghosh
 - 6. Astha Roy, D/o Late Bibha Ghosh
- Sl. Nos.2 to 6 are residing in Kasim Bazar, P.O. & P.S. Rajmahal, District Sahibganj
- 7. Mira Kumari Ghosh, w/o Prakash Roy, D/o Late Surya Narayan Ghosh, r/o Mathura Nath Lane, P.O., P.S. & District: Bhagalpur
 - 8. Ranjeet Ghosh, son of late Chandicharan Mahto
 - 9. Rajesh Ghosh, son of Ranjeet Ghosh
 - 10. Rakesh Ghosh, son of Ranjeet Ghosh
- Sl. Nos.8, 9 & 10 are residing in Village: Kupai, P.O. Alabandha, P.S.: Bolpur, District Birbhum

... **Defendants/Respondents 2nd Party/ Respondents**

CORAM :HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Appellants : Mrs. Sushmita Lal, Advocate
: Mr. Manoj Kumar Ram, Advocate
For the Respondent No.6 : Mr. Kanti Kumar Ojha, Advocate
: Ms. Rashika Bhardwaj, Advocate
: M/s S.N. Saraswati, Advocate
: Mr. Pranjal Chaturvedi, Advocate
For the Respondents : Mr. Sudhir Kumar Sharma, Advocate
: Mr. Gautam Kumar, Advocate
: Ms. Savita Kumari, Advocate
: Mr. Sanjay Kumar Sinha, Advocate

C.A.V. On 21.01.2026 **Pronounced On: 01.05.2026**

This Second appeal has been filed against the judgement and decree dated 27.02.2023 (decree sealed and signed on 13.03.2023),

passed by District Judge – III, Sahibganj, dismissing Civil Appeal No.17/2018, preferred by the appellants herein and affirming the judgement & decree dated 21.03.2018 (decree sealed and signed on 09.04.2018), passed by learned Sr. Civil Judge – I, Rajmahal, decreeing the Original Suit No.73/2005.

2. The contesting defendants lost in both the courts, and consequently, they are the appellants before this Court.

3. The plaintiff filed partition suit and prayed for following the reliefs:

- i. *For a decree declaring that the suit properties are ancestral properties of the plaintiffs and defendants.*
- ii. *A Preliminary decree of partition declaring 1/8th share to the plaintiff and other defendants each of the suit property by metes and bound.*
- iii. *Production of any gift deed by Defendant No. 1 to 4 bearing no. 2521, 2522, 2523 & 2524 all dated 22.04.1972 executed by father in their favour against the suit properties be declared void, illegal and not binding upon the plaintiff.*
- iv. *It be declared that deed of relinquishment executed by plaintiff and her sisters in favor of Defendants No. 1 to 4 vide Registered Deed No. 4836/1994 is void, has got no force in eyes of law and not binding upon the plaintiff.*
- v. *A Decree for preparation of final decree by carving out separate patti in the joint properties in favor of the plaintiff and separate possession of the same be delivered to the plaintiff.*
- vi. *Cost of the suit.*
- vii. *Any other relief or reliefs for which plaintiff is entitled which this court feels just and proper.”*

On 15-2-2008, the plaint was amended and after amendment the plaintiff further sought a declaration that the aforesaid registered gift deeds are null and void.

4. The suit was decreed and the 1st Appellate Court affirmed the judgement of the trial court holding that the suit of the plaintiff is for partition and all other reliefs are consequential in nature and are not barred by limitation.

5. This appeal was admitted vide order dated 30.11.2023 by framing two substantial questions of law and later on two further questions were framed vide order dated 18.12.2025. Thus, this appeal is on the following substantial questions of law: -

(i) *Whether both the courts below have erred in recording findings about nature of property as the ancestor's property without framing any issues in this regard?*

(ii) *Whether both the courts below have committed error of law by disbelieving the registered Relinquishment Deed executed by plaintiff/respondent in favour of the appellants and registered gift deed (Ext.3A to 3D) executed by father of the appellants in favour of the appellants?*

(iii) *Whether the learned courts were justified in holding that the gift deeds and relinquishment deeds were void ab initio?*

(iv) *Whether the challenged to gift deeds and relinquishment deed were barred by limitation?*

6. **Arguments of the appellants (defendant nos. 1 to 4)**

A. Sequence of events

- i. The parties are the descendants of the common ancestor Babu Lal Ghosh who died in **1934** or before, leaving behind his minor son, Surya Narayan Ghosh, and his widow as evident from registered deed number 543 dated 4.5.1934 exhibited by the defendant.
- ii. **17.6.1956-** commencement of the Hindu Succession Act 1956
- iii. Babu Lal Ghosh died before **17.6.1956**, hence after Babu Lal's death, his self-acquired property devolved solely upon Surya Narayan Ghosh, being the only male issue.
- iv. On **22-4-1972**, Surya Narayan Ghosh, the father of the appellants and the respondents executed gift deed nos. 2521, 2522, 2523 and 2524 of his land gifting 8 bighas, 9

kathas, 19 dhurs, 8 bighas, 19 kathas, 9 dhurs, 9 bighas, 7 dhurs and 9 bighas, 9 kathas and 12 dhurs respectively in favour of his 4 sons, the appellants herein.

- v. On **2-4-1992**-Surya Narayan Ghosh, the father of both the parties died.
- vi. On **24-8-1994**- The plaintiffs and defendant nos. 5 and 6 voluntarily executed relinquishment deed of their share in the father's property measuring 50 bighas in favour of their four brothers, the appellants herein.
- vii. On **14-9-1994**- The plaintiff Shanti Ghosh executed a cancellation deed of the relinquishment deed mentioned supra vide deed no. 5191 of 1994.
- viii. In the year **2005**, the plaintiff filed a suit before the court of Sub-Judge 1, Rajmahal, District- Sahibganj being T (partition) Suit No. 73 of 2005 praying for the reliefs and further amended reliefs in the year 2008 as mentioned above.

B. The trial court's Judgement

On 21-3-2018, the suit was decreed by the trial court declaring that the gift deeds mentioned above are null and *void-ab-initio* on the ground that the property in question is ancestral property and the father has not taken the consent of other coparceners and further had not executed the gift deeds for legal necessity.

The learned trial court further declared the above-mentioned relinquishment deed *void* on the ground that the property is ancestral property and there is no consideration given for relinquishment of the share in the ancestral property. The court has further held that since the deeds are void so the question of getting it set aside by the court is not required.

C. The 1st appellate court's Judgement

On 27-2-2023, the 1st appellate court vide its judgement passed in Civil Appeal no. 17/2018 held that gift deeds were executed without the consent of other coparceners and was not done for the pious purpose or legal necessities by assuming the properties to be ancestral property and without any finding as to how the suit property is ancestral.

The learned 1st appellate court also held that the relinquishment deed was obtained fraudulently by misrepresentation and hence it is void.

D. Submissions.

- a. The learned court assumed the property to be ancestral property, without giving any finding as to how the suit property is ancestral and without framing any issues with regard to that.
- b. Surya Narayan Ghosh inherited the property from his father, and thereafter he became the absolute owner of the property with all rights of self-disposition. The property inherited by him from his father, Babulal is not an ancestral property.
- c. Surya Narayan Ghosh had executed 4 gift deeds, i.e. gift deeds 2521, 2522, 2523, 2524, on 25/4/72 of 35-19-7 Dhur of his land in favour of the Appellants, who are his sons.
- d. Since the property in dispute is not an ancestral property, Surya Narayan Ghosh became the absolute owner and had all the rights to execute the aforesaid gift deeds in favour of his sons. The gift deeds are valid registered deeds.
- e. The challenge of the relinquishment deed and gift deeds in the present case is barred by limitation.
- f. The Appellants have become the absolute owner of the property by virtue of the gift deeds and relinquishment deed, and therefore the plaintiff -respondent can get a share in the suit property only if the gift deeds and the relinquishment deed are set aside. The learned counsel submits that the plaintiff has sought declaration with respect to the gift deeds and relinquishment deed and hence the limitation period for the same is three years.
- g. The plaintiff and defendant nos. 5 and 6 had executed a registered relinquishment deed no. 4836/94 on 24/8/1994 of land measuring 50-15-19 1/4 Dhur, which was their father's land (Self and Inherited), in favour of defendants nos. 1 to 4, who are their brothers, voluntarily out of their own free will, which would become evident on perusal of relinquishment deed. A relinquishment deed can absolutely be executed without monetary or any considerations.

E. Judgements relied upon by the appellants.

- i. In the case of *Arunachala Gounder Vs. Ponnusamy reported in (2022) 11 SCC 520*, the Hon'ble Supreme Court held that before the enactment of Hindu Succession Act 1956, succession to the property of the Hindus, whether ancestral or self-acquired, was governed by pristine principles of Hindu Law as embodied in the

Sastric text and Smritis. Under the Mitakshara Law, even the self-acquired property of a male devolved exclusively upon his male issue. In the very case, the Hon'ble Supreme Court referred that it is admitted that if the acquirer leaves behind a male issue, it will descend as separate property to the issue down to the 3rd generation.

- ii. In the case of ***U.R. Virapakshaial Vs Sarvamma and Another*** passed in ***Civil Appeal no 7346 of 2008***, the Hon'ble Supreme Court referred to Mulla's Hindu Law (17th Edition) Article 213, wherein it is stated that the ancestral property will be when it has travelled down to the three generations next to the holder in unbroken male descent.
- iii. The Supreme Court in the Judgment in the case of ***Commissioner of Wealth Tax, Kanpur and others Vs Chander Sen Ors*** reported in ***(1986) 3SCC 567***, held that after passing of the Hindu Succession Act, 1956, the traditional view that upon inheritance of an immovable property from paternal ancestor upto three degrees, an HUF (Hindu Undivided Family) automatically come into existence, no longer remained legal position in view of Section 8 of the Hindu Succession Act, 1956.
- iv. As per the ratio of the Supreme Court in the case of ***Yudhishter Vs. Ashok Kumar*** reported in ***(1987) 1 SCC 204***, after passing of the Hindu Succession Act, 1956, the position which traditionally existed with respect to an Automatic right of a person in properties inherited by his paternal predecessor in interest from the latter's paternal ancestors up to 3 degrees above, has come to an end. Under the traditional Hindu law, whenever a male ancestor inherited any property from any of his parental ancestor upto 3 degrees above him, then his male legal heirs upto three degrees below him had a right in that property equal to that of a person who inherited the same.
- v. The Supreme Court in ***K. Balakrishnan Vs. K. Kamalam & Ors. Reported in AIR 2004 SC 1257*** ruled that a gift deed made to a minor by a parent is valid and irrevocable if it is accepted on their behalf and that such acceptance can be implied by conduct, even if the minor does not take physical possession immediately.

- vi. The Hon'ble Supreme Court in case of ***Sukhbiri Devi Vs. Union of India*** reported in ***AIR 2022 SC 5058*** held that though the Plaintiff objected to the relinquishment deed, he did not challenge said deed in a competent Civil Court within the limitations period, hence the suit was barred by limitations. The Hon'ble Supreme Court held that the question of limitation is not to be considered with reference to the validity of the relinquishment deed. It has been held that consideration of the validity of a relinquishment deed, and the consideration of the period of limitations with reference to the same are different and distinct.

7. Arguments of contesting respondent nos.1,2,3,4,5,7,8 and 9.

- A. With regard to ***1st substantial question of law***, "*whether courts below erred in recording a finding about nature of property as the ancestral property without framing any issue in this regard*", the learned counsel has submitted that from bare perusal of the plaint as well as the written statement, it would appear that parties contested suit on the pretext that the property was ancestral property. There was no specific denial in the written statement regarding the nature of the property and there was no occasion for the learned trial court to frame any issue with regard to the same. Order XIV Rule-1 CPC contemplates that "Issues arises where material propositions of facts or law is affirmed by one party and denied by other". As there was no denial and the parties contested the suit in the backdrop that property in question is "ancestral", there was no occasion to frame any issue with regard to nature of the property.

In the case in hand, it is not in dispute that the property in question was acquired by grandfather namely Babulal Ghosh. After his death, his son Surya Narayan Ghosh and his widow, who was alive at the time of death of Babulal Ghosh, inherited the property. After birth of Defendant Nos. 1 to 4, they constituted a co-parcenary with their father as well as daughters (now as per amendment in Section 6 of the Hindu Succession Act, 2005).

The Hon'ble Supreme Court in the case of ***Bachhaj Nahar Vrs. Nilima Mandal and others***, reported in ***2009 AIR SCW 287*** has considered objects of pleading & importance of framing of issue. Even a case not specifically

pleaded can be considered where the pleadings are in substance.

In case in hand, parties went to trial fully knowing the rival case and laid all the evidences not only in support of their contention but in refutation of those of the other side. It cannot be said that absence of an issue was fatal to the case or that there was mistrial which vitiates proceeding. Reference is invited in this regard ratio laid down by Hon'ble Apex court in judgement reported in *AIR 1963 SC 884 in the case of Nedunuri kameswaramma Vs Sampati Subba Rao*. The substantial question no. (i) framed by this Hon'ble Court in the present case does not arise for consideration.

- B. With regard to *2nd substantial question of law* regarding relinquishment deed executed by plaintiff and registered gift deeds executed by father in favour of the defendants, it has been submitted that Section 122 of the Transfer of Property Act contemplates:

“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. Such acceptance must be made during the lifetime of the donor and while he is still capable of giving. If the donee dies before acceptance, the gift is void.

From bare perusal of gift deeds [Ext. 3(A) to 3(D)] executed by Surya Narayan Ghosh (father of the parties) in favour of defendants nos.1 to 4, it would appear that at the time of execution of gift deeds in the year 1972, Defendant Nos. 1 to 4 were minor. There is no representation on behalf of the minor and therefore such gifts are not permissible in law. On perusal of gift deeds, it would transpire that there is no acceptance.

As the property in question was "ancestral" the consent of co-parceners was required, which is also lacking in the gift deeds. Plaintiff and others sisters were born and alive at the time of execution of the gift deeds, but no consent has been taken from them as apparent from the gift deeds.

It is not in dispute that Surya Narayan Ghosh died in the year 1992 but even after lapse of 20 years after execution of the gift deeds, no such acceptance was made during his life time.

Learned trial court, after perusal of gift deeds and settled legal position in this regard, has concluded that gift deeds are *void ab-initio* and not valid in law.

Learned 1st Appellate Court after perusal of evidence on record has affirmed the findings and held that gift deeds are *void-ab-initio* and on the basis of same, plaintiff and her sisters cannot be deprived of their share in the light of the ratio laid down by Hon'ble Court in the case of ***Veenita Sharma Vrs. Rakesh Sharma & Ors (Supra)***.

- C. With regard to ***substantial questions of law No.(iii)***, it has been humbly submitted that findings with regard to relinquishment deed and gift deeds that they are void ab-initio is in accordance with law and does not call for any interference. The learned trial court while holding the same as *void-ab-initio* document has made elaborate analysis of the recitals and the requirements as contemplated in law and has rightly relied upon the judgment passed in ***1989 Madras 257 (P. Balakrishnan Vrs. District Registrar)***, with regard to relinquishment deed and after considering the requirement of a valid gift deed held gift deeds [Ext. 3(A) to 3(D)] as void ab-initio document, which is in accordance with law and same does not call for any interference.
- D. The ***substantial question of law no. (iv)***, “*Whether challenge to gift deeds and relinquishment deed were barred by limitation*”, it has been submitted that learned trial court after perusal of records and elaborate analysis has concluded that gift deeds and relinquishment deed are void-ab-initio documents. It is well-settled that question of limitation will arrive only when the documents are valid. Reference is invited in this regard to judgement reported in ***2006 AIR SCW 3595: (2006) 5 SCC 353 (Prem Singh Vrs. Birbal & Ors.)***.
- E. It has been submitted that partition suit was instituted in the year 2005 being O.S No. 73/2005 for partition of 1/8th share of the plaintiff. Learned 1st appellate court after perusal of entire materials on record has concluded that suit was for partition and relief of declaration of gift deeds executed by her father in favour of brothers and subsequent *Nadabinama* by her and her other sisters are only consequential relief and not barred by limitation.
- F. The learned 1st Appellate Court while considering the gifts deeds and relinquishment deed as void documents invalid in law and relying upon the ratio laid down by the Hon'ble Supreme Court in ***Veenita Sharma Vrs. Rakesh Sharma &***

Ors (Supra) has held that daughters are entitled for their share in the ancestral property, which is in accordance with law. The appellate court has recorded a finding that suit is not barred by limitation, which does not call for any interference.

8. During the course of hearing, it transpired that the age of the defendant no. 1 to 4 at the time of execution of the gift deeds were as under: -

	Gift Deed executed by Surya Narayan Ghosh in favour of sons	Age in the Year 2023 As per Memo of Second Appeal	Age on 25.07.1972
Appellant No.1	Vijay Kumar Yadav @ Ghosh (Gift Deed No.2524 dt 25.07.1972-Exhibit-3/c)	63 Years	12 Years
Appellant No.2	Pradeep Kumar Yadav @ Ghosh (Gift Deed No.2521 dt 25.07.1972-Exhibit-3/d)	55 Years	04 Years
Appellant No.3	Ramanand Yadav @ Ghosh (Gift Deed No.2522 dt 25.07.1972-Exhibit-3/a)	53 Years	02 Years
Appellant No.4	Devanand Yadav @ Ghosh (Gift Deed No.2523 dt 25.07.1972-Exhibit-3/b)	50 Years	Less than 01 Year

9. **Arguments of the Respondent no.6**
Whether both the courts below have erred in recording findings about nature of property as the ancestor's property without framing any issues in this regard?

In this regard, it is submitted that-

- I. In the trial court and the 1st Appellate Court, both the parties were on the same and similar stand that the property is ancestral in nature. *Vineeta Sharma case [(2020) 9 SCC 1]* has been cited and argued on behalf of both the parties. Even the Written Statement submitted by the defendants had used the word "ancestral property" at many occasions. The Gift Deeds and the relinquishment deeds, on which the appellants completely relied upon, itself reflects the existence of the property as "ancestral property".

- II. In such circumstances, even if the registered deeds uses the word "ancestral property" in a "casual and not technical" way, it does not become a ground for this Court to overlook such 'errors in law' because ignorance/mistake of law cannot be excused (*ignorantia juris non excusat*).
- III. So, the nature of property was never an issue in the courts because both sides were arguing with the same admitted fact that the property was ancestral, and hence, nowhere been challenged. As a result, this admitted fact has attained finality and could not be disturbed by this Hon'ble Court in 2nd Appeal, and in support of the aforesaid submission, the learned counsel has relied upon the judgment passed in the case of *Rabindranath Panigarhi vs Surendra Sahu, Para 10*, reported in (2025 INSC 333).

Whether the learned courts were justified in holding that the gift deeds and relinquishment deeds were void ab initio?

In this regard, it is submitted that -

- IV. The learned trial court and the 1st appellate court has rightly pointed out that there is no statement of acceptance in all the four Gift Deeds in question.

Hence, the question arises -

What is the validity of a Gift Deed without a valid acceptance?

- V. Even if the sons were minor at the time of execution of the Gift Deeds and the deeds were being executed by the father himself, it must have been accepted by a legal guardian to fulfill the necessity of Section 122 of the Transfer of Property Act, which defines "Gift" and declares acceptance of the gift as a compulsory requirement for the gift to be valid.
- VI. There is neither any recital of acceptance nor is there any evidence in proof of acceptance. The Gift was never accepted during the lifetime of the father, and hence, without a valid acceptance, the same is nullity in the eyes of law, and in support of the aforesaid submission, the learned counsel has relied upon the judgment passed in the case of *Naramadaben Thakker vs Pranjivandas Thakker* reported in [(1997) 2 SCC 255]
- VII. So far as the Deed of Relinquishment is concerned, the Trial Court and the 1st Appellate Court has pointed out,

from the recital of the alleged *Nadabinama* itself, that the same has been executed with an understanding that the sisters have no rights in the scheduled properties of the *Nadabinama*. If the sisters have no rights in the scheduled properties of the *Nadabinama*, what are they actually relinquishing? This makes the *Nadabinama* a nullity in the eyes of law.

- VIII. It is a well-settled rule of interpretation of deeds of release that however wide and general the covenant of release may be, its operation must be restricted to the rights which are in the contemplation or in controversy between the parties and would not cover or comprehend rights which are never in minds of the parties at that time.
- IX. It is well settled that general words of release do not mean release of rights other than those then put up and have to be limited to the circumstances which were in the contemplation of the parties when it was executed.
- X. In support of the aforesaid submission, the learned counsel has relied upon the judgment passed in the case of *Rajagopal Pillai vs Pakkiam Ammal, Para 6*, reported in *[(1976) 1 Supreme Court Cases 299]*.

Whether the challenge to gift deeds and relinquishment deed were barred by limitation?

In this regard, it is submitted that –

- XI. It is a well-settled law that if a document is nullity or void-ab-initio in the eyes of law, there is no application of limitation. The document has no validity from the very beginning and a decree for setting aside the same would not be necessary. The document is "*non-est*" in the eyes of law as it would be a nullity.
- XII. In support of the aforesaid submission, the learned counsel has relied upon the judgment passed in the case of *Prem Singh vs Birbal, Para 15 & 16*, reported in *[(2006) 5 Supreme Court Cases 353]*

Findings of this Court.

10. Case of the plaintiff

- (a) The plaintiff and the defendants are full brothers and sisters and members of a Joint Hindu School of Mitakshara family in business and properties.
- (b) The following genealogical table will show the relationship in between the plaintiff and defendants.

Babulal Ghosh (died)

/

Surya Narayan Ghosh (Died) = Wife Ahilya Debi (Died)

/

S = son

S1- Bijoy Yadav

S2 – Pradeep Yadav

S3 – Ramanand Yadav

S4-Debanand Yadav

D= daughter

D1–Shanti Ghosh

D2–Sandhya Rani Ghosh

D3–Meera Kumari Ghosh

D4–Sumitra Ghosh

- (c) The sole plaintiff was Shanti Ghosh, daughter of Surya Narayan Ghosh. The defendants were the sons /daughters of Surya Narayan Ghosh.
- (d) The plaintiff and defendants own and possess jointly the immoveable properties described in schedule of the plaint after inheriting the same since the death of their grandfather, father and mother all occurred after 1956.
- (e) In the year 1994, defendant nos. 1 to 4 cunningly took the plaintiff and defendant no.5 & 6 (Sandhya Rani Ghosh and Meera Kumari Ghosh) in confidence and caused to tender their signatures over a registered deed of relinquishment against schedule of properties vide Deed no.4836/1994 making them understand that properties described are the gifted properties by their father to sons only and the properties left in the name of grandfather will be allotted to sisters. Accordingly, sisters, the plaintiff and defendant no. 5 & 6, consented and signed on the deed of relinquishment in good faith.
- (f) After a few days, plaintiff came to know that Defendant nos.1 to 4 (brothers of the plaintiff), have taken the signature on the said deed of relinquishment with respect to the properties of grandfather who died intestate and in the relinquishment deed it is alleged to have been gifted by their father in favour of sons only. The plaintiff also found that no property has been left to be allotted for the sisters.
- (g) After knowing the mischievous game of the defendant nos.1 to 4, plaintiff executed a deed of cancellation of the deed of relinquishment no.4836/94 dated 24.08.1994 by registered cancellation deed no. 5191/1994 dated 14.09.1994 and continued their joint possession over the schedule properties.

- (h) Again, in the month of January 2005, the plaintiff came to know that Defendant Nos. 1 to 4 had, by playing fraud and acting surreptitiously, got the properties mutated in their names on the basis of a partition deed executed fraudulently, without the signature or consent of the plaintiff, a joint co-sharer, and without any knowledge to her. The plaintiff came to know about this foul play when she approached the Halka Karmachari.
- (i) The plaintiff thereafter found that Defendant Nos. 1 to 4 were also enjoying the benefits (income) of the joint properties, including the scheduled properties, without giving the plaintiff her rightful share.
- (j) When the plaintiff became aware of the facts stated above, the plaintiff, on 1st March 2005, demanded partition of all the joint properties by metes and bounds among the plaintiff and the defendants, allocating 1/8th share to each; however, defendant nos. 1 to 4 rejected the plaintiff's request and denied for any partition, hence the present partition suit has been filed regarding the scheduled properties, with a request to include other joint properties later after proper description.
- (k) The cause of action arose in January 2005, when the plaintiff came to know that defendant nos. 1 to 4 were trying to get the scheduled properties transferred in their names by using fraudulent gift deeds without informing the plaintiff which has never brought before the plaintiff and never been acted upon, and also arose on 1st March, 2005, when the plaintiff demanded partition of the joint property by metes and bounds.

11. Case of the contesting defendant nos. 1, 3 & 4

- (i) The suit as framed is not maintainable, bad for non-joinder of parties, grossly time barred and undervalued. The plaintiff has got no cause of action.
- (ii) It is incorrect to say that defendant nos.1 to 4 have wrongly mutated their names on the grab of paid rent documents. This is also incorrect to say that on 1st March 2005 the plaintiff demanded partition. There was or is no any joint property which can be partitioned.
- (iii) Babulal Ghosh died much before 1935. The sons and daughter of Bijoy Kumar Yadav, Pradeep Yadav, Ramanand Yadav have not been made party and their names in the genealogical table given by the plaintiff are missing for some ulterior motive for unlawful gain.

- (iv) Babulal Ghosh died about 75 years ago and none of the plaintiff or defendants were born at that time. So, it is incorrect to say that the plaintiff and defendants own and possess the joint immovable property since after the death of their grandfather. Only Surya Narayan Ghosh was present at the time of the death of Babulal Ghosh and he acquired as many as about 175 bighas land in various mouza after the death of his father being the only son. At the time of death of Babulal Ghosh, codification was not in existence.
- (v) It is incorrect and denied that in the year 1994, defendant nos. 1 to 4 took the plaintiff and defendants No.5 and 6 in their confidence and cause to tender their signature on register deed of relinquishment. It is also incorrect and denied that plaintiff and defendant no. 5 and 6 consented and signed on the deed of relinquishment on good faith. All such averments are wrong and denied.
- (vi) The facts are that the plaintiff and defendant nos.5 and 6 have already been paid in cash and gold in lieu of their share, which has been admitted in the registered deed of relinquishment. The registered deed of relinquishment bears the signature of Dhannanjay Yadav, husband of the plaintiff and also bears the signature of mother of the plaintiff. It also bears the signature of Nimai Chandra Ghosh, husband of Sandhya Rani Ghosh, so the question of any fraud does not arise. All the sisters, that is, the plaintiff and defendants nos.5 and 6 have signed the deed in presence of mother and husband after being fully satisfied and upon knowing all the facts mentioned in the deed. It is specifically mentioned in the deed of relinquishment on the page 8 at the last line by Dhanajay Yadav himself that Deed was fully made over to the parties of the deed and this fact has been personally mentioned in the deed of relinquishment by Dhananjay Yadav with his own pen.
- (vii) The deed of cancellation dated 14.09.1994 has been executed by the plaintiff only, whereas the deed of relinquishment dated 24.08.1994 was executed by Sandhya Rani Ghosh, Shanti Rani Ghosh, Mira Kumari Ghosh.
- (viii) It is the case of the contesting defendants that a deed executed by these persons cannot be cancelled by executing a deed of cancellation. It is also incorrect to say that the defendant has taken the signature of plaintiff on

deed of relinquishment only for the properties gifted by their father in favour of sons. The plaintiff along with defendant no.5 and 6 were knowing all the facts mentioned in the deed of relinquishment. The husband of the plaintiff as well as defendant nos.5 and 6 were present at the time of execution of deed of relinquishment and they along with their wife have personally read over the deed of relinquishment again and again and respective husband two of them had put their signatures also. The deed of cancellation dated 14.09.1994 have been wrongly and illegally got executed and therefore it is not binding to these defendants. The deed of relinquishment along with the deed of gift executed by the father are all valid deeds having every force of law and have been acted upon.

- (ix) The father of the plaintiff and defendants, with the consent of all the family members, gifted the property and had executed gift deeds. The gift deeds executed by the father is a valid deed; the offer, acceptance and delivery of possession have been made and the deeds have been acted upon.
- (x) The story of January 2005, regarding going to Halka Karmchari as stated in the plaint has been denied.
- (xi) Before filing this suit, the plaintiff filed a criminal misc. Case bearing Misc. Case No. 92/99 under Section 144 Cr.P.C., and in para 5 of that petition, the plaintiff had admitted partition. The said proceeding was converted into 107 Cr.P.C, and was dropped.
- (xii) It is incorrect to say that the plaintiff came to know the facts on 1st March 2005. The plaintiff was knowing all the facts from the very beginning. No demand for partition was ever made. In the registered deed of relinquishment executed by the plaintiff alongwith other two sisters defendant no. 5 and 6, it is admitted that all the properties recorded in the deed of relinquishment are the properties of defendant nos.1 to 4 and the plaintiff has no right, title, interest or possession over the properties or any portion thereof. So, now the question of demand of partition does not arise. The plaintiff has no share in the suit properties at all much less the share claimed. Hence the question of the necessity of partition does not arise at any time.
- (xiii) Similarly, defendant no. 2 Pradip Kumar Yadav @ Pradip Kumar Ghosh have filed his separate written statement, in which he has mentioned the same facts which has been

stated by defendant no. 1, 3 and 4 in their joint written statement.

- (xiv) Defendant no. 5, namely, Sandhya Rani Ghosh filed her another written statement, in which she has supported the contents of the plaint and the submissions and prayer of the plaintiff.
- (xv) Defendant no. 6 Mira Kumari Ghosh filed her written statement and supported the contents of the written statement of the defendant no. 1, 2, 3 and 4 and in fact she has not claimed any relief or share in the suit property.
- (xvi) The defendant no. 7 has also not claimed her share in the property and have supported the statements of the defendant no. 1 to 4.
- (xvii) After amendment of the plaint, the defendants no. 1 to 4 and 6 and 7 jointly filed additional written statement in which the defendant no.1 to 4 and defendants no. 6 and 7 have denied the relief of the plaintiff and stated that no fraud has been committed at the time of execution of the relinquishment deed no. 4836/1994 executed by the sisters in favour of their brothers. They further stated that as provided in Section 5 and 5A of Santhal Pargans Settlement Regulation, 1872, no suit shall lie in any civil court with regard to any land during the pendency of survey operation. It has been clearly mentioned in the aforesaid law that the suit can be filed before the Settlement Officer and only after a certificate of transfer from him, such suit can be tried here in this court.
- (xviii) On the basis of the pleadings of the parties, the trial court framed the following issues for consideration: -

I. Whether the suit as framed is maintainable?

II. Whether the plaintiff has cause of action to file the suit?

III. Whether the suit is bad for non-joinder of necessary parties?

IV. Whether the suit is barred by limitation?

V. Whether the suit is under -valued and deficient court-fee has been paid?

VI. Whether the suit barred by the provisions u/s 5-A of Santhal Pargana Settlement Regulation-III, 1872?

VII. Whether there is unity of title and possession over the suit land between the parties?

VIII. Whether the gift deeds executed by the father of the plaintiff and defendants nos. 1 to 4 bearing nos.

2521 , 2522, 2523 and 2524 dated 22.04.1972 are void , illegal and not binding on the plaintiff?

IX. Whether the deed of relinquishment executed by plaintiff and her sister in favour of defendant no. 1 to 4 vide registered deed no. 4836 of 1994 is a void document?

X. Whether the plaintiff is entitled for the relief and other reliefs as claimed in the plaint?

12. The parties adduced both oral and documentary evidences.

Trial Court

13. The learned trial Court first took up issue No. 8-***Whether Gift Deed No. 2521, 2522, 2523, 2524 dated 22.04.1972 executed by father of the plaintiff and defendant in favor of Defendant No. 1 to 4 is illegal, void and not binding upon the plaintiff*** and held that the Gift Deed Nos. 2521, 2522, 2523 & 2524 dated 22.04.1972, executed by father of the plaintiff and defendants, namely, Surya Narayan Ghosh, are *ab initio void* documents.

14. Learned trial Court held that the gift deeds, executed by Surya Narayan Ghosh in favor of Defendant No. 1 to 4, were without consent of the co-sharers, who were minor and not competent to give consent and that the recital of the gift deeds was not true as recital says that executant namely Surya Narayan Ghosh has raised Defendant Nos. 1 to 4 and made them "*Bada*" and out of love and affection and for the services rendered by them is executing the gift deeds. The learned trial court after assessment of age of Defendant Nos. 1 to 4 found that they were all minor and that there is no averment that gift has been accepted. Learned Trial court held that one year child cannot render any service to father, and accordingly held that Gift Deed Nos. 2521, 2522, 2523 & 2524, all dated 22.04.1972 were *ab initio void* document having no sanctity in the eyes of law.

15. ***With regard to issue No. IX Whether deed of Relinquishment No. 4836/1994 executed by plaintiff and Defendant No. 5 and 6 in favor of the Defendant No. 1 to 4 is void document and binding upon the plaintiff***, the learned trial court held that the deed of relinquishment *neither* bears details of the property *nor* mention how much gold or money was given to sisters and hence cannot treated as partition document. The learned trial Court further held that the sisters have executed deed of relinquishment without having knowledge that they have any interest in the property or what is being relinquished, which as such is illegal and *ab initio void* having no sanctity in the eyes of law. The learned trial Court further held that there was no requirement for cancellation of the relinquishment deed 4836/94 executed by the sisters in favor of Defendant Nos. 1 to 4, as the same

is ab initio void document which has got executed by the Defendant Nos. 1 to 4 fraudulently and there was no requirement for execution for cancellation of registered deed of relinquishment vide Deed No. 5191/1994.

16. *With regard to issue No. VII Whether there is a unity of title of possession among plaintiff and the defendant,* the learned trial Court after recording that the gift deed Nos. 2521, 2522, 2523 & 2524 dated 22.04.1972 and deed of Relinquishment No. 4836/1994 dated 24.08.1994 are ab initio void documents, held that there is unity of title and possession between the parties.

17. *With regard to issue No. VI Whether suit of the plaintiff is appeared under Section 5 of Santhal Pargana Settlement Regulation III of 1872,* the learned trial Court held that the suit is not barred under aforesaid provision.

18. *With regard to issue No. V Whether plaintiff has inadequately valued the suit property and paid less court fee,* the learned trial Court held that onus is on the defendants to prove this fact, which they failed to prove and accordingly decided issue no. 5 in favor of the plaintiff and against the contesting defendants.

19. *With regard to issue No. IV Whether the suit is barred by limitation,* the learned trial Court held that as the gift deed Nos. 2521, 2522, 2523 & 2524 dated 22.04.1972 and deed of relinquishment dated 24.08.1994 are ab initio void documents, hence the present suit is not barred by limitation. The learned trial Court also observed that partition suit was instituted on 21.11.2005 within 12 years from the date of execution of relinquishment deed dated 24/8/1994 and consequently held that the suit was not barred by limitation.

20. *With regard to issue No. 3 Whether suit is bad for non-joinder of necessary parties,* the learned trial Court held that the suit was not bad for non-joinder of necessary party.

21. *Issue No. 2 Whether plaintiff has cause of action to institute suit* was decided in favor of the plaintiff by holding that the plaintiff has cause of action to institute the partition suit.

22. *Issue No. 1 Whether the suit is maintainable in present form* was also decided in favor of the plaintiff.

23. The learned trial Court ultimately held that the plaintiff and defendants are entitled to 1/8th share each in the suit property and entitled for preparation of final decree after appointment of Survey Knowing Pleader Commissioner.

1st Appellate Court

24. That learned first appellate court framed the following points of determination: -

(i) *Whether the suit of the plaintiff is actually the suit for declaration and the reliefs claimed in the suit is hopelessly barred by limitation?*

(ii) *Whether plaintiff and her sisters are entitled for the shares as decreed by the learned trial court in the property of their father after relinquishing the same voluntarily?*

25. That learned 1st appellate court after perusal of gift deeds [Ext. 3(A) to 3(D)] executed by Surya Narayan Ghosh, father of the parties, in favour of sons (Defendant Nos. 1 to 4) recorded that there is no mention in the gift deeds that for which pious purpose or legal necessity the ancestral properties is being gifted to other co-parceners; the only factum mentioned in the gift deeds is that property is being gifted due to love and affection and being pleased with the service. Admittedly, at the time of execution of gift deeds, the defendant Nos. 1 to 4 were minor and unable to render any service. The learned 1st appellate Court also recorded that gift deeds were executed without any permission of other co-sharers/daughters and accordingly held that gift deeds were invalid.

26. The learned 1st appellate court after taking into account the judgment passed by the Hon'ble Supreme Court in the case of ***Veenita Sharma Vrs. Rakesh Sharma (supra)*** held that relinquishment deed executed by daughters in favour of their brothers seems to deprive their share in the ancestral property, which is not permissible. The learned 1st Appellate Court held that relinquishment deed as well as the gift deeds are void or invalid and their validity, which has been under challenge, is not barred by limitation.

27. The learned 1st appellate court relying on the ratio laid down by the Hon'ble Supreme Court in the case of ***Veenita Sharma Vrs. Rakesh Sharma & Ors (supra)*** held that daughters are coparcener like sons and their shares in the ancestral property cannot be deprived unless prior to 20.12.2004 the ancestral property is partitioned either by way of a decree of court or by way of registered partition deed. Any such document which gives the effect of partition depriving the share of daughters in the ancestral property is not valid unless there is cogent reason forwarded by the parties taking benefit of such deed is given and such reason is required to be closely scrutinized by the court.

28. The learned 1st appellate court referred to the judgement passed in the case of ***Veenita Sharma versus Rakesh Sharma reported in (2020) 9 SCC 1*** and referred to the legal proposition as laid down in the said judgement -

“I.) If daughter is alive on the date of enforcement of Amendment Act , 2005 i.e. 09.09.2005 irrespective of whether she was born before the said amendment, provisions in substituted sections 6 of the Hindu Succession Act confers status of coparcener on daughter born before or after the amendment in the same manner as son with same rights and liabilities. Meaning thereby a daughter becomes coparcener since birth and in case she dies after date of coming into force of amendment, inheritance is not by survivorship but by intestate or testamentary succession as provided in substituted section 6 (3).

.....
.....
.....
VI.) Nature and applicability of the said amendment are of retroactive application i.e. they confer benefits based on the antecedent event i.e. rights given by birth and the Mitakshra coparcenary law shall be deemed to include a reference to a daughter as a coparcener.”

29. The learned 1st appellate court recorded the following observations/findings: -

- a. The Hon’ble Apex Court in the above mentioned judgment of Veenita Sharma vs. Rakesh Sharma and Others has held that the daughters are coparcener by birth and further held that their interest in ancestral property is protected unless the property is not divided prior to the amendment either by way of a final decree of partition of the court or by a registered partition deed. The other modes which gives effects to the partition of ancestral property and deprive the shares of daughters in the ancestral property are held invalid.*

- b. Implication of law of limitation in the devolution of succession of the ancestral properties and its settlement either by way of consent decree and thereby relinquishment of shares by way of execution of power of attorney and there subsequent challenge on the basis of fraud, misrepresentation etc is decided in Rangnaykamma and Ors versus K.S.Prakash (dead) through LRS and ors reported as (2008)15 SCC 67. In this case the Honorable Apex court interpreting the provisions of O 6 R 4&2 of CPC and sections 19 and 24 to 30 of Contract Act, 1872 has held that a voidable contract is required to be challenged by filing a suit and in that case limitation will apply but where a*

contract is void itself, it cannot be acted upon and for that there is no requirement to be challenged and so no question of applicability of limitation arises. It has further held by the Honorable court that deed of partition of joint family property based on family settlement on the basis of which a compromise decree was passed , alleged to be vitiated by fraud or misrepresentation in a subsequent suit for partition, alleged fraud or misrepresentation would render the deed voidable and therefore, the deed required to be set aside, in absence of which suit would be affected by limitation.

- c. In another judgment which has also been relied upon by the learned trial court titled as Thimmaiah and Others Vs. Ningamma and another reported as (2000) 7 Supreme Court cases 409 it has been held by Hon'ble Apex Court that Karta may disposed of ancestral property only when (I) disposition is of a reasonable portion and is for a recognized "pious purpose"; or (2). Permission is taken of other person having an interest in the property whether inchoate or otherwise. In the same judgment the Hon'ble Court has further held relying upon another judgment of Guramma Bharat Chanbasappa Desmukh V. Mallappa Chanbasappa that a managing member may alienate joint family property in three situations, namely (i) legal necessity, or (ii) Benefit of the estate, or (iii) with consent of all the coparceners of the family.*
- d. In the light of the above mentioned discussions and the judgments of Hon'ble Apex Court and after going through the gift deeds Ex 3A to 3D which has been executed by the father of the parties who is also the Karta, it is clear that there is no mention in the gift deeds that for which pious purpose or legal necessities the ancestral property is being gifted to other coparceners. The only factum mentioned in the gift deeds is that the property is being gifted due to love and affection and being pleased with the service. Admittedly at the time of the execution of gift deeds the sons who are the appellants herein were minor and were also unable to render any service. The learned trial court has rightly held that the gift deeds are void ab initio on this count even if it is supposed that the minor sons after attaining the majority accepted the gift deeds and enjoyed the properties which is reflected from the revenue receipts Ext B to B-26 filed by them. Moreover, as stated above the gift of the ancestral*

property is not done for the pious purpose or legal necessities and admittedly is done without permission of the other co-sharers/daughters. Hence, the gift deeds are invalid on this count also as held by the Hon'ble Supreme Court in the judgment of Thimmaiah and Others Vs. Ningamma.

- e. As far as the relinquishment deed executed by daughters in the favour of their brothers seems to deprive their shares in the ancestral property which is not permissible as per the judgment of the Hon'ble Apex Court in Veenita Sharma vs. Rakesh Sharma and Others (supra). When the deeds are invalid or void for any reason, they are not required to be declared void or invalid and hence, if their validity is challenged at any stage, the challenge of such deeds is not barred by limitation. The sum and substance of the judgment of Hon'ble Apex Court in Veenita Sharam vs. Rakesh Sharma (supra) is that the daughters are coparcener like sons and their shares in the ancestral property cannot be deprived unless prior to 20.12.2004 the ancestral property is partitioned either by way of a decree of court or by way of registered partition deed. Any such document which gives the effect of partition depriving the share of daughters in the ancestral property is not valid unless there is cogent reason forwarded by the parties taking benefit of such deed is given and such reason is required to be closely scrutinized by the court.*
- f. In the present case the learned trial court has rightly held the gift deeds executed by the father in favour of the sons void ab initio and the subsequent relinquishment deed executed by the daughters under the misrepresentation of allotting properties which are left after the execution of the gift deed but in fact there were no such properties left.*
- g. In the light of aforesaid discussions my answer to the point of determinations is that (1.) the suit of the plaintiff is a suit for partition and the reliefs of declaration of gift deeds executed by her fathers in favour of her brothers and the subsequent nadabinamas by her and other sisters are only consequential relief and are not barred by the limitation and (2.) In the light of the judgement passed by the Hon'ble the Supreme court of India in Veenita Sharma vs. Rakesh Sharma reported in (2020) 9 SCC1 the daughter are entitled for their shares in the ancestral properties.”*

30. The learned 1st appellate ultimately dismissed the appeal.

31. **Findings of this Court on 1st substantial question of law: -**

(i) Whether both the courts below have erred in recording findings about nature of property as the ancestor's property without framing any issues in this regard?

- a) Admittedly, no issue was framed as to whether the suit property was ancestral property or not although the plaintiff sought a declaration that the suit property was ancestral property of the parties. The learned courts have recorded that the suit property was ancestral property.
- b) ***The learned counsel for the appellants (defendant no. 1 to 4) has argued*** that the common ancestor, Babu Lal Ghosh died before coming into force of Hindu Succession Act, 1956 leaving behind his widow and only son, Surya Narayan Ghosh, hence after the death of Babu Lal Ghosh, his self-acquired property (the suit property), devolved solely upon Surya Narayan Ghosh, being the only male issue. It has been argued that consequently, the suit property was the self and exclusive property of Surya Narayan Ghosh and it was not ancestral property in his hand and hence Surya Narayan Ghosh could alienate his part of property through gifts in favour of his sons vide four registered gift deeds, all dated 22.04.1972 (total 35 acres, 19 decimals and 7 dhurs).
- c) ***On the other hand, it is the case of the plaintiff and other contesting respondents*** that there was no dispute that the suit property was the ancestral property of the parties and therefore no such issue, as to whether the property was ancestral property of the parties, was required to be framed.
- d) ***To this, the learned counsel for the appellants has submitted*** that it is a pure question of law as to whether the property was ancestral property or not and such term

cannot be loosely used and understood. The learned counsel has submitted that under Hindu law, ancestral property is inherited from parental ancestor (father, grandfather or great grandfather) for at least 4 generations remaining undivided. She has submitted that since the property was the self-acquired property of Babu Lal Ghosh, hence it cannot be said to be ancestral property in the hand of his son Surya Narayan Ghosh. Accordingly, it has been submitted that the learned court could not have recorded a finding that the suit property was ancestral property without framing any issue to this effect.

- e) ***This court finds*** that the plaintiff sought a declaration that the property was ancestral property of the parties but there is no pleading in the written statement denying this fact.
- f) It has been pleaded by the contesting defendants that only Surya Narayan Ghosh was present at the time of the death of Babulal Ghosh and he acquired as many as about 175 bighas land in various mouza after the death of his father being the only son and at the time of death of Babulal Ghosh, codification was not in existence. It has also been pleaded that the father of the plaintiff and defendants, with the consent of all the family members, gifted the property and had executed deeds of gift in the year 1972.
- g) The learned counsel for the plaintiff and other contesting respondents have rightly pointed out that from bare perusal of the plaint as well as the written statement, it would appear that parties contested suit on the pretext that the property was ancestral property. There was no specific denial in the written statement regarding the nature of the property as claimed by the plaintiff and there was no occasion for the learned trial court to frame any issue with regard to the same. The learned counsel has rightly referred to Order XIV Rule-1 CPC which contemplates that *"Issues arises where material propositions of facts or*

law is affirmed by one party and denied by other". As there was no denial and the parties contested the suit in the backdrop that property in question is "ancestral", there was no occasion to frame any issue with regard to nature of the property.

- h) The learned counsel for the respondent no.6 while supporting the case of the plaintiff has rightly submitted that even the Gift Deeds and the relinquishment deed, on which the appellants completely relied upon, itself reflects the existence of the property as "ancestral property". So, the nature of property was never an issue in the courts because both sides were arguing with the same admitted fact that the property was ancestral.
- i) As a result, this admitted fact has attained finality and could not be disturbed by this Hon'ble Court in 2nd Appeal. It has been held by Hon'ble Supreme Court in the case of ***Rabindranath Panigarhi vs Surendra Sahu, Para 10, reported in 2025 INSC 333***, that a finding of fact cannot be disturbed in 2nd appeal unless it is shown to be perverse.
- j) In the present case, there was no dispute that the property was ancestral property and therefore ***neither*** there was any occasion to frame an issue as to whether the property was ancestral property of the parties ***nor*** there is any scope to give a contrary finding in 2nd appeal.
- k) The fact as to whether in terms of Hindu Law, a property is an ancestral property or not, is a pure question of fact and if disputed, the same is to be decided as an issue based on the pleadings. In the absence of foundational pleadings of the contesting defendants questioning the status of the suit property as 'ancestral property', there was no occasion to frame any issue on such point.
- l) Elaborate arguments have been made by the learned counsel for the appellants that the property in the hand of Surya Narayan Ghosh was exclusive property as it was the

self-acquired property of his father Babulal Ghosh, and therefore Surya Narayan Ghosh could have parted with the said property by gift deeds in the year 1972. On the other hand, it has been argued by the plaintiff/ contesting respondents that the gift deeds were *void-ab-initio* and consequently the nature of the property remained as joint and ancestral property for which partition suit was filed.

- m) This court finds that it is not the case of the defendant no. 1 to 4 in their pleadings that the property in the hand of Surya Narayan Ghosh was his exclusive property in any manner whatsoever. As discussed above, the finding of the learned court that the suit property was ancestral property does not suffer from error inspite of no issue framed on this point. This Court also finds that the joint family continued even after the death of Babulal Ghosh as his widow was surviving with Surya Narayan Ghosh.
- n) Admittedly, at the time of death of Babulal Ghosh, his widow was alive (cross examination of D.W-1- paragraph 37) and at the time of execution of the gift deeds in the year 1972 at least the eldest daughter, Shanti Ghosh, that is, the plaintiff was born in the family on 08.01.1956 (exhibit-C), prior to coming into force of Hindu Succession Act, 1956. This is apparent from the materials placed by the parties during the course of hearing. Thus, the joint family extended by virtue of birth of daughter and also by virtue of birth of four sons in the family prior to execution of gift deeds in the year 1972.
- o) There is no averment in the pleadings that the suit property was the self-acquired property of Babulal Ghosh. In spite of this, the learned counsel for the appellants has argued that the property was the self-acquired property of Babulal Ghosh and, therefore, upon his death, it became the exclusive property of Surya Narayan Ghosh and not coparcenary property. Consequently, it has been contended

that Surya Narayan Ghosh was competent to gift a portion of the property to his four sons to the exclusion of the daughters in the family. Such an argument is beyond the scope of the first substantial question of law and is also beyond the pleadings of the parties.

- p)* In this context, the learned counsel for the appellants has relied upon the judgement passed in the case reported in **(2022) 11 SCC 520 (supra)** where it was an admitted fact that the property in question was the self-acquired property of the acquirer, purchased through auction sale despite the family was joint. The point was, whether upon the death of the owner of self-acquired property, his daughter would inherit the property through inheritance or it would devolve by survivorship. The paragraphs of the said judgement relevant for the purposes of this case are quoted as under: -

“55. On a complete reading of the judgment [Katama Natchier v. Rajah of Shivagunga, 1863 SCC OnLine PC 11 : (1861-64) 9 Moo IA 543] of Privy Council in extenso, the following legal principles are culled out:

55.1. That the general course of descends of separate property according to the Hindu Law is not disputed — it is admitted that according to that law such property (separate property) descends to widow in default of male issue.

55.2. It is upon the respondent therefore to make out that the property herein in question which was separately acquired does not descend according to the general course of Law.

55.3. According to the more correct opinion where there is undivided residue, it is not subject to ordinary rules of partition of joint property, in other words if it a general partition any part of the property was left joint the widow of the deceased brother will not participate notwithstanding with separation but such undivided residue will go exclusively to the brother.

55.4. The law of succession follows the nature of property and of the interest in it.

55.5. The law of partition shows that as to the separately acquired property of one member of a united family, the other members of the family have neither community of interest nor unity of possession.

55.6. The foundation therefore of a right to take such property by survivorship fails and there are no grounds for postponing the widow's right to any superior right of the coparceners in the undivided property.

55.7. The Hindu Law is not only consistent with this principle but is also most consistent with convenience.

56. Another case of the Privy Council is Sivagnanan Tevar v. Pariasami, 1878 SCC OnLine PC 6. The aforesaid case, before the Privy Council was in continuity and of the consequence of the previous case Katama Natchier v. Rajah of Shivagunga, 1863 SCC OnLine PC 11, but of a different branch of the family. In the said case, it was observed as under:

“Their Lordships then have come to the conclusion that, as between the descendants of Muttu Vaduga and Dhorai Pandian, the palayapat was the separate property of the latter; that on the death of Dhorai Pandian, his right, if he had any left undisposed of in the property, passed to his widow, notwithstanding the undivided status of the family; and that therefore, the case was one to which the rule of succession affirmed in Katama Natchier v. Rajah of Shivagunga, 1863 SCC OnLine PC 11 applies.” (emphasis in original)

57. The principles of law which can be deduced from reading of the aforesaid judgment can be summarised as under:

57.1. The law laid down in Katama Natchier v. Rajah of Shivagunga [Katama Natchier v. Rajah of Shivagunga, 1863 SCC OnLine PC 11 : (1861-64) 9 Moo IA 543] , that succession in the case of Hindu male dying intestate is to be governed by inheritance rather than survivorship, is reaffirmed.

57.2. In the absence of male member, the property devolves upon widow and thereafter to daughter.

68. Right of a widow or daughter to inherit the self-acquired property or share received in partition of a coparcenary property of a Hindu male dying intestate is well recognised not only under the old customary Hindu Law but also by various judicial pronouncements and thus, our answer to the Questions 1 and 2 are as under:

“If a property of a male Hindu dying intestate is a self-acquired property or obtained in partition of a coparcenary or a family property, the same would devolve by inheritance and not by survivorship, and a daughter of such a male Hindu would be entitled to inherit such property in preference to other collaterals.”

69. In the case at hands, since the property in question was admittedly the self-acquired property of Marappa Gounder despite the family being in state of jointness upon his death intestate, his sole surviving daughter Kupayee Ammal, will inherit the same by inheritance and the property shall not devolve by survivorship.”

q) In the judgement reported in **SCR 1954 243**, the substantial question for consideration was whether the properties that the defendant no.1 got under a will of his father were to be regarded as ancestral or self-acquired properties in his hands.

r) In the present case, in the absence of any pleading that the properties of Babulal Ghosh [grand -father of the parties] were his self-acquired properties and they ceased to be ancestral properties in the hand of Surya Narayan Ghosh [father of the parties], the aforesaid judgements do not help the appellants in any manner.

s) ***In view of the aforesaid discussions, the 1st substantial question of law is answered by holding that both the courts have not erred in recording that the nature of property was ‘ancestral property’ of the parties and in the aforesaid backdrop of the case of respective parties, no issue to this effect was required to be framed. The 1st substantial question of law is accordingly decided against the appellants and in favour of the contesting respondents.***

32. Findings on the 2nd and 3rd substantial question of law:

(ii) Whether both the courts below have committed error of law by disbelieving the registered Relinquishment

Deed executed by plaintiff/respondent in favour of the appellants and registered gift deed (Ext.3A to 3D) executed by father of the appellants in favour of the appellants?

(iii) Whether the learned courts were justified in holding that the gift deeds and relinquishment deeds were void ab initio?

- i. In view of the aforesaid findings while answering substantial question of law no.1 that the property was rightly recorded by the learned court as ancestral property, the 2nd substantial question of law is being considered.
- ii. It is the case of the appellants (defendant nos.1 to 4) that prior to the death of Surya Narayan Ghosh death in 1992, ***he gifted 35 acres 19 decimals 7 dhurs*** to his four sons i.e. defendant nos. 1 to 4 vide registered gift deeds no. 2521, 2522, 2523 and 2524 all dated 22.04.1972.

So far as the ***remaining properties*** are concerned, the plaintiff and defendant nos. 5 and 6, being the three daughters of Surya Narayan Ghosh, executed relinquishment deed no. 4836 of 1994 in favor of defendant nos. 1 to 4 consisting of ***50 acres 15 decimals 19 ½ dhurs***.

Consequently, it is the case of the appellants that the entire suit property inherited by Surya Narayan Ghosh from Babulal Ghosh belongs to the defendant no. 1 to 4, partly on account of four gift deeds all dated 22.04.1972 and partly on account of relinquishment deed of the year 1994.

- iii. The suit was filed by the plaintiff, being one of the daughters of Surya Narayan Ghosh, bearing T (Partition) Suit N0. 73/2005 *inter-alia* challenging the registered gift deeds all dt. 22.04.1972 and registered relinquishment deed of the year 1994 as null and void and it is the case of the contesting defendants that the aforesaid gift deeds and relinquishment deed are valid.

- iv. This Court finds that both the learned courts have disbelieved the registered relinquishment deed of the year 1994. The learned trial court referred to the judgment passed by the Hon'ble Supreme Court and was of the view that the person relinquishing a property through a relinquishment deed should know and state as to what right the person is relinquishing and if it is executed by assuming that the executor has no right over the property then such deed of relinquishment is null and void since beginning.
- v. In the judgment passed by the Hon'ble Supreme Court reported in *(1976) 1 SCC 299 [Rajagopal Pillai & Anr. Vs. Pakkiam Ammal & Others]*, it has been held in paragraph 6 by referring to the earlier judgment reported in *AIR 1952 SC 29 [Chinnathayi @ Veeralakshmi vs Kulasekara Pandiya Naickerand]* that it is well-settled that general words of a release do not mean release of rights other than those then put up and such release deed has to be limited to the circumstances which were in the contemplation of the parties when it was executed. It has been held by the Hon'ble Supreme Court in the said judgment that it is well-settled rule of interpretation of deeds of release that, however, wide and general the covenant of release may be, its operation must be restricted to the rights which are in the contemplation or in controversy between the parties and would not cover or comprehended rights which are never in the minds of the parties at that time.
- vi. *In the present case*, both the learned courts have given concurrent findings with respect to the relinquishment deed involved in the present case. A finding of fact has been recorded that the relinquishment deed reveals that the same was executed with an understanding that the sisters have no right in the schedule property of the relinquishment deed and in this backdrop, it has been held that if the sisters executed the relinquishment deed with an understanding

that they had no right over the property, then under such circumstances, the relinquishment deed with respect to the property, which is sought to be relinquished through the deed, is itself void/nullity in the eyes of law. The person who is relinquishing any right ought to know as to what his right is and what is being relinquished by him.

vii. This Court has also gone through the relinquishment deed as found in the records received from the court concerned and finds that it has been clearly recorded by the three sisters including the plaintiff that they have no right of the property covering area 50 acres, 15 decimals and 19 and ½ dhurs and they will also not claim any right over the said property. This Court is of the considered view that on the face of the relinquishment deed, it was executed by an understanding that the sisters have no right over the said property which is admittedly a part of the suit property. Under the aforesaid circumstances and in the light of the aforesaid judgement, passed by the Hon'ble Supreme Court reported in *(1976) 1 SCC 299 (supra)*, there is no doubt that the deed of relinquishment on the face of it is of no consequence and was *void-ab-initio* and nullity in the eyes of law.

viii. *This court is of the considered view that the learned courts have rightly appreciated the relinquishment deed and held that the same was void-ab-initio.*

ix. On the point of gift, the learned counsel for the appellants has relied upon the judgment passed by the Hon'ble Supreme Court reported in *(2004) 1 SCC 581 [K. Balakrishnan vs. K. Kalam & Others]*.

x. The learned counsel for the respondent no. 6, on the other hand, has relied upon the judgment reported in *(1997) 2 SCC 255 Naramadaben Maganlal Thakker vs Pranjivandas Maganlal Thakker & Ors]*. The perusal of the said judgment, relied upon by the learned counsel for

the respondent no. 6, reveals that it has been held that Section 122 of Transfer of Property Act defines 'gift' to mean the transfer of certain existing movable or immovable 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 by or on behalf of the donee must be made during the life time of the donor and while he is still capable of giving. After having recorded as aforesaid, the Hon'ble Supreme Court held that it would thus be clear that the execution of a registered gift deed, acceptance of the gift and delivery of the property, together make the gift complete. Thereafter, the donor is divested of his title and the donee becomes the absolute owner of the property. The question which was posed before the Hon'ble Supreme Court was whether the gift in question had become complete under Section 123 of the Transfer of Property Act? The Hon'ble Supreme Court in the facts of the said case held that from the recital of the gift deed, it appeared that it was a conditional gift and there was no recital of acceptance nor was there any evidence in proof of acceptance as the donor had specifically stated that the property would remain in his possession till he was alive. The Hon'ble Supreme Court held that the gift deed conferred only limited right upon the respondent-donee. The gift was to become operative after the death of the donor. The Hon'ble Supreme Court found that donor had executed a conditional gift deed and retained the possession and enjoyment of the property during his life time. The recitals in the cancellation deed of the gift deed were consistent with the recitals in the gift deed. The Hon'ble Supreme Court ultimately held that the gift deed had become ineffective and inoperative and it was duly cancelled.

- xi. The aforesaid judgment reported in *(1997) 2 SCC 255 (supra)* was subject-matter of consideration in the judgment passed by the Hon'ble Supreme Court reported in *(2014) 9 SCC 445 [Renikuntla Rajamma (D) By Lr vs K.Sarwanamma]* and it has been held by the Hon'ble Supreme Court that a conjoint reading of Sections 122 and 123 of the Transfer of Property Act makes it abundantly clear that "transfer of possession" of the property covered by the registered instrument of the gift duly signed by the donor and attested as required is not a sine qua non for the making of a valid gift under the provisions of Transfer of Property Act, 1882.
- xii. The Hon'ble Supreme Court referred to the judgment passed in the case reported in *(1997) 2 SCC 255* and held in paragraph 19 that the decision in the said case clearly rests on the facts of that case and observed that the gift was conditional and there was no acceptance of the donee it could not operate as a gift. It was also held that absolute transfer of ownership in the gifted property in favour of the donee was absent in that case which led the Hon'ble Supreme Court to hold that the gift was conditional and had to become operative only after the death of the donee and the judgment was clearly distinguishable and could not be read to be an authority for the proposition that delivery of possession is an essential requirement for making a valid gift and thereafter held that *there is no prohibition in law that ownership in a property cannot be gifted without its possession and right of enjoyment*. Paragraphs 11, 12, 16 to 20 of the judgement is also quoted as under: -

"11. Sections 124 to 129 which are the remaining provisions that comprise Chapter VII deal with matters like gift of existing and future property, gift made to several persons of whom one does not accept, suspension and revocation of a gift, and onerous gifts including effect of non-acceptance by the donee of any obligation

arising thereunder. These provisions do not concern us for the present. All that is important for the disposal of the case at hand is a careful reading of Section 123 (supra) which leaves no manner of doubt that a gift of immovable property can be made by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses. When read with Section 122 of the Act, a gift made by a registered instrument duly signed by or on behalf of the donor and attested by at least two witnesses is valid, if the same is accepted by or on behalf of the donee. That such acceptance must be given during the lifetime of the donor and while he is still capable of giving is evident from a plain reading of Section 122 of the Act. A conjoint reading of Sections 122 and 123 of the Act makes it abundantly clear that “transfer of possession” of the property covered by the registered instrument of the gift duly signed by the donor and attested as required is not a sine qua non for the making of a valid gift under the provisions of the Transfer of Property Act, 1882.

12. Judicial pronouncements as to the true and correct interpretation of Section 123 of the TP Act have for a fairly long period held that Section 123 of the Act supersedes the rule of Hindu law if there was any making delivery of possession an essential condition for the completion of a valid gift.

16. The matter can be viewed from yet another angle. Section 123 of the TP Act is in two parts. The first part deals with gifts of immovable property while the second part deals with gifts of movable property. Insofar as the gifts of immovable property are concerned, Section 123 makes transfer by a registered instrument mandatory. This is evident from the use of word “transfer must be effected” used by Parliament insofar as immovable property is concerned. In contradiction to that requirement the second part of Section 123 dealing with gifts of movable property, simply requires that gift of movable property may be effected either by a registered instrument signed as aforesaid or “by delivery”. The difference in the two provisions lies in the fact that insofar as the transfer of movable property by way of gift is concerned the same can be effected by a registered instrument or by delivery. Such transfer in the case of immovable property no doubt requires a registered

instrument but the provision does not make delivery of possession of the immovable property gifted as an additional requirement for the gift to be valid and effective. If the intention of the legislature was to make delivery of possession of the property gifted also as a condition precedent for a valid gift, the provision could and indeed would have specifically said so. Absence of any such requirement can only lead us to the conclusion that delivery of possession is not an essential prerequisite for the making of a valid gift in the case of immovable property.

17. That brings us to the decisions of this Court which have led to this reference. In K. Balakrishnan case [(2004) 1 SCC 581] the donor executed a gift deed of a specified share of the property inherited by her from her maternal grandfather in favour of her minor son who was the appellant donee before the Court and her four year old daughter. The property gifted included a school building. The gift deed stipulated that the responsibility to sign in regard to the said school and the right to income would be with the donor during her lifetime and thereafter would be vested in the donee. After the execution of the gift deed the donor cancelled the same and made a will bequeathing the property in favour of her daughter whereupon the appellant donee filed a suit for declaration of his title to the suit property on the basis of the gift and a further declaration for annulment of the cancellation deed and the will executed by the donor. The trial court dismissed the suit while the first appellate court decreed the same. The High Court restored the view taken by the trial court and held that when the donor had reserved to herself the right to sign the papers with respect to management of the school and the right to take usufruct from the property where the school was situated, no property was transferred under the deed. In appeal before this Court, the view taken by the High Court was reversed and that taken by the first appellate court restored. This Court held: (K. Balakrishnan case [(2004) 1 SCC 581] , SCC p. 586, paras 10-11)

“10. We have critically examined the contents of the gift deed. To us, it appears that the donor had very clearly transferred to the donees ownership and title in respect of her 1/8th share in properties. It was open to the donor

to transfer by gift title and ownership in the property and at the same time reserve its possession and enjoyment to herself during her lifetime. There is no prohibition in law that ownership in a property cannot be gifted without its possession and right of enjoyment. Under Section 6 of the Transfer of Property Act ‘property of any kind may be transferred’ except those mentioned in clauses (a) to (i). Section 6 in relevant part reads thus:

‘6. What may be transferred.—Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force.

(a) ***

(b) A mere right to re-entry for breach of a condition subsequent cannot be transferred to any one except the owner of the property affected thereby.

(c) ***

(d) An interest in property restricted in its enjoyment to the owner personally cannot be transferred by him.

(e) A mere right to sue cannot be transferred.’

11. Clause (d) of Section 6 is not attracted on the terms of the gift deed herein because it was not a property, the enjoyment of which was restricted to the owner personally. She was the absolute owner of the property gifted and it was not restricted in its enjoyment to herself. She had inherited it from her maternal father as a full owner. The High Court was, therefore, apparently wrong in coming to the conclusion that the gift deed was ineffectual merely because the donor had reserved to herself the possession and enjoyment of the property gifted.”

(emphasis supplied)

18. We are in respectful agreement with the statement of law contained in the above passage in K. Balakrishnan case [(2004) 1 SCC 581] . There is indeed no provision in law that ownership in property cannot be gifted without transfer of possession of such property. As noticed earlier, Section 123 does not make the delivery of possession of the gifted property essential for validity of a gift.

.....

19. The above decision in Maganlal Thakker case [(1997) 2 SCC 255] clearly rests on the facts of that case. If the gift was conditional and there was no

acceptance of the donee it could not operate as a gift. Absolute transfer of ownership in the gifted property in favour of the donee was absent in that case which led this Court to hold that the gift was conditional and had to become operative only after the death of the donee. The judgment is in that view clearly distinguishable and cannot be read to be an authority for the proposition that delivery of possession is an essential requirement for making a valid gift.

20. In the case at hand as already noticed by us, the execution of registered gift deed and its attestation by two witnesses is not in dispute. It has also been concurrently held by all the three courts below that the donee had accepted the gift. The recitals in the gift deed also prove transfer of absolute title in the gifted property from the donor to the donee. What is retained is only the right to use the property during the lifetime of the donor which does not in any way affect the transfer of ownership in favour of the donee by the donor.”

- xiii. In the judgment passed by the Hon’ble Supreme Court reported in **(2004) 1 SCC 581 (supra)**, the Hon’ble Supreme Court held that the donor had very clearly transferred to the donees ownership and title with respect to specified share in the properties and it was open to the donor to transfer by gift, title and ownership in the property and at the same time, the donor reserved its possession and enjoyment to herself during her lifetime. It has been held that there is no prohibition in law that ownership in a property cannot be gifted without its possession and right of enjoyment. The Hon’ble Supreme Court further observed that the last part of Section 127 of the Transfer of Property Act clearly indicates that a minor donee incompetent to contract under Section 11 of the Contract Act is, however, competent to accept a non-onerous gift. The acceptance of an onerous gift, however, cannot bind the minor. If he accepts the gift during his minority of a property burdened with obligation and on attaining majority does not repudiate but retain it, he would be bound by the obligation attached

to it. Section 122 covers the case of a minor donee being a person under legal disability. The Section, therefore, employs the expression ‘accepted by or on behalf of donee’. Acceptance of a gift can be made by minor himself or on his behalf by someone else. It has also been held that where a gift is made in favor of a child of the donor, who is the guardian of the child, the acceptance of gift can be presumed to have been made by him or on his behalf without any overt act signifying acceptance by the minor. It has also been held that knowledge of gift deed to both the parents as natural guardian and the donee is sufficient to indicate acceptance of gift by the minor himself or on his behalf by his parents. It has further been held that non-delivery of possession of gifted property, non-exercise of any rights of ownership over it and failure by the donee on attaining majority in getting his name mutated in official record are not circumstances negating the presumption of acceptance by the minor during his minority or on his attaining majority. It has further been observed that since the possession and enjoyment of the property including the management of the school were retained by the donor during his lifetime, the acceptance of ownership of the property gifted could be by silent acceptance. Such acceptance is confirmed by its non-repudiation by his parents and by him on attaining majority. These are the circumstances which reasonably give rise to an inference, if not of express, but implied acceptance of the gift.

- xiv. In the present case, the gift deeds are completely silent on the point of its acceptance and the defendant nos. 1 to 4 have *neither* pleaded *nor* led evidence on implied acceptance of gifts. It was the specific case of the plaintiff that the gift deeds were never acted upon and in the written statement the defendant nos. 1 to 4 have taken a plea in paragraph 15 that gift deeds were acted upon and that the

father of the plaintiff and defendants with the consent of all the family members gifted the property and had executed deeds of gift and the deeds of gift executed by father is a valid deed and that the offer, acceptance and delivery of possession have been made and the deeds have been acted upon. Having taken such a stand, it was for the defendant nos. 1 to 4 to prove that there was due acceptance of the gifts by them. The facts and circumstances of this case do not show that the gifts were ever accepted by the defendants. Further there is finding that there is no recital about acceptance in the gift deeds by or on behalf of the four minor donees. Further, no material has been pointed out by the learned counsel for the appellants to even suggest that the gifts were ever accepted by the minor donees during the life time of their father (donor- Surya Narayan Ghosh) who died in the year 1992. The delivery of possession may not be relevant, but there has to be acceptance of gifts which is completely absent in the present case.

- xv. Otherwise also, this Court is of the considered view that the judgment passed in the case of *(2004) 1 SCC 581 (supra)* does not help the appellants in any manner, inasmuch as, the gift deeds in the present case includes a recital that the gifts have been given *in lieu of services rendered by the sons* and the learned courts have given a concurrent findings that it was impossible for the donee to render services as all the donees were minors at that point of time including one son who was just one year of age.
- xvi. Further, it is important to note that the properties were ancestral properties in the hand of Surya Narayan Ghosh and upon birth of the sons in the family they became the coparceners of Surya Narayan Ghosh with respect to the ancestral property and therefore Surya Narayan Ghosh could not have gifted the property to coparceners who were

already the co-sharers of the property. The argument of the appellants, that the property was the exclusive property of the father of the parties and therefore the father could gift the property exclusively to his sons, is devoid of any merits. It has already been held while answering the 1st substantial question of law that the property was rightly held to be ancestral property.

xvii. In view of the aforesaid facts and circumstances, this court is of the considered view that the learned courts have rightly held that the gift deeds were void-ab-initio.

33. Thus, this court holds that both the courts have rightly disbelieved the registered Relinquishment Deed (exhibit-4D) executed by the three sisters in favour of the four brothers (appellants- defendant no. 1 to 4) and also rightly disbelieved the registered gift deeds (Ext.3A to 3D) executed by father of the parties in favour of the four brothers (appellants- defendant no. 1 to 4) and have rightly held that the relinquishment deed as well as the gift deeds were void -ab-initio. The substantial questions of law nos. 2 and 3 are accordingly decided against the appellants and in favour of the contesting respondents.

Findings of 4th substantial question of law

Whether the challenged to gift deeds and relinquishment deed were barred by limitation?

34. In the judgment passed by the Hon'ble Supreme Court in the case of *State of Maharashtra v. Pravin Jethalal Kamdar 2000 SCC OnLine SC 522*, the Hon'ble Supreme Court held that as far as void and non-est documents are concerned, it would be enough for the plaintiff to file a simpliciter suit for possession to which Article 65 of the Limitation Act, 1963 would apply.

35. In the judgment passed by the Hon'ble Supreme Court reported in *AIR 2022 SC 5058 [Sukhbiri Devi and others vs. Union of India & Others]*, the Hon'ble Supreme Court recorded that a bare perusal of the plaint revealed that the suit was instituted for declaratory reliefs,

inter alia, stating that the cause of action arose when application for alternative plot was made by the Defendant No. 5 by playing fraud and claiming himself to be the sole and exclusive heir of deceased Rama Nand and further when objections through representations were made to the wrongful application of allotment, on number of dates. It was prayed for a decree declaring that the plaintiffs were the co-owners in the allotment of the suit plot and the defendant No. 5 was not the exclusive owner of the plot. The point for consideration before the Hon'ble Supreme Court whether the issue of limitation can be determined as a preliminary issue under Order XIV, Rule 2(2) of the Code of Civil Procedure and further question was whether a larger period of limitation of 12 years would be available to the plaintiffs to bring in a suit by virtue of application of Article 136 of the Limitation Act, 1968 as contended by the appellant in the facts of the case.

The Hon'ble Supreme Court held that undoubtedly, the plaintiffs sought for declaration in the manner referred above and thereby, made the nature of the suit as declaratory. This position was indisputable. It was also true that the Trial Court though found the period of limitation as three years taking into account the nature of the reliefs and the judgement was sustained up till the Hon'ble Supreme court. The Hon'ble Supreme Court further observed that the relief sought for in the suit reveal that the first prayer, which is the main prayer, was declaratory in nature and even according to the plaintiffs, as revealed from the plaint the second prayer was only consequential relief. The Hon'ble Supreme Court observed that a perusal of the same would undoubtedly show that it was consequential and not an independent one and held that therefore the courts were right in holding that the said prayer was grantable only if the first prayer is allowed. The Hon'ble Supreme Court observed that the plaintiff had taken the plea that relinquishment deed was obtained by playing fraud and held that the suit was to be filed within the period of limitation from the date of knowledge of fraud. The reason being that the plaintiffs were seeking declaration to the effect that they were the co-owners of the suit plot and defendant no. 5 to 9 was not the exclusive owner thereof and the

said relief could be granted by the court only when the relinquishment deed dated 21.10.1985 allegedly obtained by fraud was held to be illegal null and void and not binding upon them and until the said relinquishment deed was held to be illegal and not binding on the executants, the plaintiffs could not be declared as co-owners of the suit plot along with defendants no. 5 to 9.

36. With respect to the challenge to the registered gift deeds and relinquishment deed, the learned counsel for the parties have relied upon the judgment passed by the Hon'ble Supreme Court reported in *(2006) 5 SCC 535 [Prem Singh & Others vs. Birbal & Others]*, whose ratio has also been mentioned by the Hon'ble Supreme Court in the judgment reported in *2025 Live Law (SC) 900 [Shanti Devi (since deceased) through Lrs. Goran versus Jagan Devi & Others]*. In paragraph 29, the Hon'ble Supreme Court with respect to the judgment passed in the case of *Prem Singh (supra)* observed that Article 59 of the Limitation Act, 1963 would only encompass within its fold fraudulent transactions which are 'voidable' transactions and not those that are 'void'. In other words, Article 59 would apply only where an instrument is *prima facie* valid and not to those instruments which are presumptively invalid. Further, it has been observed that when the document in question is *void ab initio/or void*, a decree for setting aside the same would not be necessary since such a transaction would be *non-est* in the eyes of law, owing to it being a nullity. It has been further held that there is a fine distinction between fraudulent misrepresentation as regards the 'character of the document' and fraudulent misrepresentation as regards the 'contents of a document'. It is only in the former situation that the instrument would be void and, in the latter, it would remain voidable. Article 59 would not govern the period of limitation in respect of a void transaction.

37. Paragraph 29 of the judgment passed in the case of *Shanti Devi (supra)* is quoted as under: -

“29. This Court in Prem Singh v. Birbal, (2006) 5 SCC 353, discussed the position of law as to when Article 59

of the Limitation Act, 1963 would apply and opined as follows:

i. First, that Article 59 of the Limitation Act, 1963 would only encompass within its fold fraudulent transactions which are 'voidable' transactions and not those that are 'void'. In other words, Article 59 would apply only where an instrument is *prima facie* valid and not to those instruments which are presumptively invalid.

ii. Secondly, that when the document in question is void *ab initio*/or void, a decree for setting aside the same would not be necessary since such a transaction would be *non-est* in the eyes of law, owing to it being a nullity.

iii. Thirdly, a fine distinction was drawn between fraudulent misrepresentation as regards the 'character of the document' and fraudulent misrepresentation as regards the 'contents of a document'. It is only in the former situation that the instrument would be void and, in the latter, it would remain voidable. To put it simply, Article 59 would not govern the period of limitation in respect of a void transaction.

iv. Lastly, that if a deed was executed by the plaintiff when he was a minor and it was thereby void, he had two options to file a suit to get the property conveyed thereunder i.e., he could either file the suit within 12 years of the deed or within 3 years of attaining majority.

The relevant observations are reproduced as under:

"13. Article 59 of the Limitation Act applies specially when a relief is claimed on the ground of fraud or mistake. It only encompasses within its fold fraudulent transactions which are voidable transactions."

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16. When a document is valid, no question arises of its cancellation. When a document is void *ab initio*, a decree for setting aside the same would not be necessary as the same is *non est* in the eye of the law, as it would be a nullity.

17. Once, however, a suit is filed by a plaintiff for cancellation of a transaction, it would be governed by Article 59. Even if Article 59 is not attracted, the residuary article would be.

18. Article 59 would be attracted when coercion, undue influence, misappropriation or fraud which the plaintiff asserts is required to be proved. Article 59 would apply

to the case of such instruments. It would, therefore, apply where a document is prima facie valid. It would not apply only to instruments which are presumptively invalid. (See Unni v. Kunchi Amma [ILR (1891) 14 Mad 26] and Sheo Shankar Gir v. Ram Shewak Chowdhri [ILR (1897) 24 Cal 77].)

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21. Respondent 1 has not alleged that fraudulent misrepresentation was made to him as regards the character of the document. According to him, there had been a fraudulent misrepresentation as regards its contents.

22. In Ningawwa v. Byrappa [(1968) 2 SCR 797 : AIR 1968 SC 956] this Court held that the fraudulent misrepresentation as regards character of a document is void but fraudulent misrepresentation as regards contents of a document is voidable stating: (SCR p. 801 C-D)

“The legal position will be different if there is a fraudulent misrepresentation not merely as to the contents of the document but as to its character. The authorities make a clear distinction between fraudulent misrepresentation as to the character of the document and fraudulent misrepresentation as to the contents thereof. With reference to the former, it has been held that the transaction is void, while in the case of the latter, it is merely voidable.”

In that case, a fraud was found to have been played and it was held that as the suit was instituted within a few days after the appellant therein came to know of the fraud practised on her, the same was void. It was, however, held:

“Article 91 of the Limitation Act provides that a suit to set aside an instrument not otherwise provided for (and no other provision of the Act applies to the circumstances of the case) shall be” subject to a three years' limitation which begins to run when the facts entitling the plaintiff to have the instrument cancelled or set aside are known to him. In the present case, the trial court has found, upon examination of the evidence, that at the very time of the execution of the gift deed, Ext. 45 the appellant knew that her husband prevailed upon her to convey Surveys Plots Nos. 407/1 and 409/1 of Tadavalga village to him by undue influence. The finding

of the trial court is based upon the admission of the appellant herself in the course of her evidence. In view of this finding of the trial court it is manifest that the suit of the appellant is barred under Article 91 of the Limitation Act so far as Plots Nos. 407/1 and 409/1 of Tadavalga village are concerned.”

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28. If a deed was executed by the plaintiff when he was a minor and it was void, he had two options to file a suit to get the property purportedly conveyed thereunder. He could either file the suit within 12 years of the deed or within 3 years of attaining majority. Here, the plaintiff did not either sue within 12 years of the deed or within 3 years of attaining majority. Therefore, the suit was rightly held to be barred by limitation by the trial court.”
(Emphasis supplied)”

38. The Hon’ble Supreme Court in the case of ***Shanti Devi (supra)*** has also considered the judgment passed in the case of ***Hussain Ahmed Choudhury v. Habibur Rahman reported in 2025 SCC OnLine SC 892*** in paragraph 30, which is quoted as under: -

*“30. In the decision of this Court in **Hussain Ahmed Choudhury v. Habibur Rahman reported in 2025 SCC OnLine SC 892**, where one of us, J.B. Pardiwala J., was a member of the Bench, it was reiterated that a person who is not a party to an instrument would not be obliged in law to seek its cancellation. The reason being that such an instrument would neither be likely to affect his title nor be binding on him. However, such a plaintiff must at least seek a declaration that the said instrument is not binding on him or that is invalid insofar as he is concerned. The relevant observations are reproduced hereinbelow:*

“30. As observed aforesaid, a plaintiff who is not a party to a decree or a document, is not obligated to sue for its cancellation. This is because such an instrument would neither be likely to affect the title of the plaintiff nor be binding on him. We have to our advantage two very old erudite judgments of the Madras High Court and one of the Privy Council on the subject”

The Hon’ble Supreme Court in the case of ***Shanti Devi (supra)*** ultimately summarized the ratio in paragraph 31, 32 and 33, which are quoted as under: -

“31. In Unni v. Kunchi Amma reported in 1890 SCC OnLine Mad 5, the legal position has been thus explained:

“If a person not having authority to execute a deed or having such authority under certain circumstances which did not exist, executes a deed, it is not necessary for persons who are not bound by it, to sue to set it aside for it cannot be used against them. They may treat it as non-existent and sue for their right as if it did not exist.”

(Emphasis supplied in original)

32. The same principle has been distinctly laid down by the Privy Council in Bijoy Gopal Mukerji v. Krishna Mahishi Debi, reported in 1907 SCC OnLine PC 1, where the jural basis underlying such transactions was pointed out. In that case, the reversioner sued for a declaration that a lease granted by the widow of the last male owner was not binding on him and also for khas possession. It was objected that the omission to set aside the lease by a suit instituted within the time limit prescribed by Article 91 of the Indian Limitation Act, 1877 was fatal to the suit. The following observations which are equally applicable to the case at hand, are apposite:

“A Hindu widow is not a tenant for life, but is owner of her husband's property subject to certain restrictions on alienation and subject to its devolving upon her husband's heirs upon her death. But she may alienate it subject to certain conditions being complied with. Her alienation is not, therefore, absolutely void, but it is prima facie voidable at the election of the reversionary heir. He may think fit to affirm it, or he may at his pleasure treat it as a nullity without the intervention of any Court, and he shows his election to do the latter by commencing an action to recover possession of the property. There is, in fact, nothing for the Court either to set aside or cancel as a condition precedent to the right of action of the reversionary heir. It is true that the appellants prayed by their plaint for a declaration that the ijara was inoperative as against them, as leading up to their prayer for delivery to them of khas possession. But it was not necessary for them to do so, and they might have merely claimed possession, leaving it to the defendants to plead and (if they could) prove the circumstances, which they relied on, for showing that the ijara of any derivative dealings with the property were

not in fact voidable, but were binding on the reversionary heirs.

33. In fact, it is logically impossible for a person who is not a party to a document or to a decree to ask for its cancellation. This is clearly explained by Wadsworth, J., in the decision rendered in Vellayya Konar (Died) v. Ramaswami Konar, reported in 1939 SCC OnLine Mad 149, thus:

“When, the plaintiff seeks to establish a title in himself and cannot establish that title without removing an insuperable obstruction such as a decree to which he has been a party or a deed to which he has been a party, then quite clearly he must get that decree or deed cancelled or declared void ‘in toto’, and his suit is in substance a suit for the cancellation of the decree or deed even though it be framed as a suit for declaration. But when he is seeking to establish a title and finds himself threatened by a decree or a transaction between third parties, he is not in a position to get that decree or that deed cancelled ‘in toto’. That is a thing which can only be done by parties to the decree or deed or their representatives. His proper remedy therefore in order to clear the way with a view to establish his title, is to get a declaration that the decree or deed is invalid so far as he himself is concerned and he must therefore sue for such a declaration and not for the cancellation of the decree or deed.”

(Emphasis supplied in original)”

39. Thus,

- a. Article 59 of the Limitation Act would apply only where an instrument is *prima facie* valid and not to those instruments which are presumptively invalid.
- b. When the document in question is *void ab initio*/or void, a decree for setting aside the same would not be necessary since such a transaction would be *non-est* in the eyes of law, owing to it being a nullity.
- c. There is a fine distinction between fraudulent misrepresentation as regards the ‘character of the document’ and fraudulent misrepresentation as

regards the ‘contents of a document’. It is only in the former situation that the instrument would be void and, in the latter, it would remain voidable. Article 59 would not govern the period of limitation in respect of a void transaction.

- d. A person who is not a party to an instrument would not be obliged in law to seek its cancellation. The reason being that such an instrument would neither be likely to affect his title nor be binding on him. However, such a plaintiff must at least seek a declaration that the said instrument is not binding on him or that is invalid insofar as he is concerned.
- e. If a person not having authority to execute a deed or having such authority under certain circumstances which did not exist, executes a deed, it is not necessary for persons who are not bound by it, to sue to set it aside for it cannot be used against them. They may treat it as non-existent and sue for their right as if it did not exist.
- f. This court is of the considered view that similarly, if a person executes a relinquishment deed by stating that he has no right over the property being relinquished, the relinquishment deed is ex-facie of no consequence and void ab initio and need not be challenged and it would be enough to seek a declaration that it is void ab initio and hence a nullity and not binding upon the executor of the relinquishment deed.
- g. This court is also of the considered view that if the transaction is not complete, the period of limitation itself will not begin to run. The gift is complete only upon its acceptance by the donee.

40. *In the present case*, the main relief is a declaration that the suit property was ancestral property followed by a prayer seeking partition

of the suit property and followed by a prayer seeking declaration that four gift deeds of the year 1972 executed by the father of the parties in favour of four sons (defendant nos. 1 to 4-the appellants) are null and void and not binding upon the plaintiff (daughter) and further declaration that the relinquishment deed of the year 1994 executed by the plaintiff and two sisters in favour of the defendant no. 1 to 4 was also null and void and not binding upon the plaintiff .

41. The learned courts have found that the four gift deeds and the relinquishment deed on the face of them were null and void.

So far as the gift deeds are concerned , the learned courts found that the gift deeds were executed, inter alia, in lieu of services rendered by minor sons, and one of them was less than one year old, and the minor sons were incapable of rendering any service to their father and held that the gift deeds were void ab initio and also held that even as per the gift deeds there was no acceptance of gifts.

So far as the relinquishment deed is concerned, it was held to be void ab initio on the face of the document as the executors stated in the relinquishment deed itself that they have no right over the property being relinquished.

The aforesaid findings of the learned courts have been upheld while answering the 2nd and 3rd substantial questions of law.

42. While considering the point of limitation, this court is of the considered view that the declaration by the learned court that the gift deeds and relinquishment deed were void ab initio have been based upon examination of the very character of the gift deeds and the relinquishment deed as they appeared on the face of these documents and such declaration of these documents being void ab initio is irrespective of the alleged fraud.

43. Additionally-

- i. so far as the gift deeds are concerned, the doner -father died in 1992 and admittedly, gift deeds have no recitals of acceptance of the gift by the minor sons or by anyone on their behalf. It was the specific case of the plaintiff that the gift deeds were never acted upon and the defendant nos. 1 to 4 pleaded that

there was offer, acceptance and delivery of possession of the property by their father- the donee and it was never their case before the learned courts that there was any deemed/implied acceptance of gifts.

- ii. The delivery of possession with respect gift is not essential but acceptance of gift is certainly an essential element of gift in absence of which there is no transfer of property through gift.
- iii. There can be no doubt that any case of deemed acceptance of gift by minors would essentially depend upon the facts and circumstances of the case and pleadings of the respective parties and evidences placed on record. In cases where there is no acceptance of gift, the limitation for challenging the gift deeds would commence only when the gift is complete upon acceptance as acceptance of gift is a mandatory condition of transfer of gifted property to the donee.
- iv. The defendant nos. 1 to 4, did not plead, much less prove, the year/date of acceptance of gifts from their father and simply stated in their written statement that there was offer, acceptance and delivery of possession. The gift deeds were executed in the year 1972 and the father died in 1992.
- v. The learned counsel for the appellants has tried to make out a case of deemed acceptance of gifts by minors on the date of execution of the gift deeds in the year 1972, which was never the case of the defendants as per their written statement or at any point of time before the learned courts. Once the defendants pleaded that there was some overt act of offer, acceptance and delivery of possession to make the gift complete it was for them to plead and prove such plea by leading evidence which they failed. Thus, the gifts were never complete in absence of acceptance by the donees (defendant no. 1 to 4- the appellants). The learned courts have rightly held that the gift deeds were null and void and the relief seeking such declaration was not barred by limitation.

- vi. In aforesaid circumstances, the argument of the learned counsel for the appellants that the gift was complete by virtue of deemed acceptance from the date of execution of the gift deeds in the year 1972 and hence the suit seeking declaration that the gift deeds were null and void was barred by limitation cannot be accepted.
- vii. This is over and above the fact that the learned courts additionally found that the gift deeds were executed, inter alia, in lieu of services rendered by minor sons, and one of them was less than one year old, and the minor sons were incapable of rendering any service to their father and held that the gift deed were 'void ab initio' and this finding of fact has attained finality.

44. In view of the aforesaid facts and circumstances, the gift deeds as well as the relinquishment deed were *void-ab-initio* / null and void and did not pass any right, title and interest to the defendant nos. 1 to 4 and accordingly the challenge to the gift deeds as well as the relinquishment deed as void ab initio was only consequential to the main relief of partition and the suit cannot be said to be barred by limitation when seen in the light of the judgement passed in the case of *Prem Singh (supra)* and the judgment passed in the case of *Shanti Devi (supra)* and the judgement passed in the case of *Sukhbiri Devi (supra)* does not help the appellants (defendant no. 1 to 4) in any manner.

45. ***Accordingly, the 4th substantial question of law is also decided against the appellants (defendant no. 1 to 4) and in favour of the contesting respondents by holding that challenging the gift deeds and relinquishment deed as null and void and not binding upon the plaintiff was not barred by limitation.***

46. **Summary**

- A. *While answering the 1st substantial question of law against the appellants and in favor of the contesting respondents, it is held that both the courts have not erred in recording that the nature of property was 'ancestral*

property’ of the parties and in the light of the case as pleaded by the respective parties, no issue to this effect was required to be framed.

- B. *While answering 2nd and 3rd substantial questions of law against the appellants and in favor of the contesting respondents, it is held that both the courts have rightly disbelieved the registered Relinquishment Deed (exhibit-4D) executed by the three sisters in favour of the four brothers (appellants- defendant no. 1 to 4) and also rightly disbelieved the registered gift deeds (Ext.3A to 3D) executed by father of the parties in favour of the four brothers (appellants- defendant no. 1 to 4) and have rightly held that the relinquishment deed as well as the gift deeds were void -ab-initio.*
- C. *While answering 4th substantial question of law against the appellants and in favor of the contesting respondents, it is held that the relief seeking declaration that the gift deeds and relinquishment deed were null and void and not binding upon the plaintiff, was not barred by limitation.*

47. *All substantial questions of law having been decided against the appellants (defendant no. 1 to 4) in favour of the contesting respondents, this 2nd appeal is hereby dismissed. The judgement and decree passed by the learned trial court and affirmed by the learned 1st appellate court is hereby affirmed.*

48. Pending interlocutory application, if any, is closed.

49. Let soft copy of this order be communicated to the court concerned through ‘FAX/email’.

(Anubha Rawat Choudhary, J.)

Dated: 01.05.2026

Uploaded On: 04.05.2026

Mukul/-