P L D 2015 Supreme Court 212

Present: Mian Saqib Nisar, Amir Hani Muslim and Ejaz Afzal Khan, JJ

Dr. MUHAMMAD JAVAID SHAFI---Appellant

Versus

Syed RASHID ARSHAD and others---Respondents

Civil Appeal No.413 of 2012, decided on 24th November, 2014.

(Against the judgment dated 25-1-2012 of the Lahore High Court, Lahore passed in Civil Revision No.1639-D of 1992)

Per Mian Saqib Nisar, J; Amir Hani Muslim, J, agreeing; Ejaz Afzal Khan, J, dissenting. [Majority view]

(a) Limitation Act (IX of 1908)---

----First Sched. Arts. 91 & 142---Specific Relief Act (I of 1877), Ss.8 & 39---Suit for cancellation of general power of attorney, sale agreement and sale deed and recovery of possession of immoveable property---Plaintiff joining several causes of action and seeking multiple remedies/relief in the suit---Primary remedy/relief---Ancillary, incidental and consequential remedies/relief---Question as to which remedy was to be considered for the purposes of ascertaining the limitation period for filing suit---Plaintiff allegedly executed and got registered an irrevocable general power of attorney in favour of the defendant/attorney---Defendant on basis of such power of attorney sold out the suit plot to a third person, who in turn sold it to the appellant---About 16 years after the date of execution/registration of the general power of attorney in favour of defendant, plaintiff filed a suit for cancellation of documents and possession of the suit land alleging that the power of attorney, sale agreements and sale deeds were obtained by fraud, forgery, misrepresentation and manipulation---Trial Court dismissed the suit on the basis that it was barred by limitation---High Court, however, decreed the suit on the grounds that suit being for possession of immovable property was filed within twelve years and was thus within the time limit---Legality---Suit filed by plaintiff had been treated by the High Court to be one for possession and Art.142 of First Schedule of the Limitation Act, 1908 had been resorted to---Where an instrument, was alleged to have been obtained by fraud, undue influence, coercion or misrepresentation, it was not a document which could be held to be void ab initio or on the face of it void, but it was required to be determined and adjudged by the court of law as voidable or void as the case may be and in such an eventuality, the matter shall squarely be covered by S.39 of the Specific Relief Act, 1877---Suit filed by the plaintiff in the present case was in fact for cancellation of the documents on the allegations of fraud, forgery and misrepresentation, which (suit) squarely fell within the purview of S.39 of the Specific Relief Act, 1877 and per Art.91 of the First Schedule of the Limitation Act, 1908, the prescribed period of limitation for such suit

was three years---Plaintiff was primarily challenging the documents as being invalid against him on the ground of fraud, forgery, misrepresentation etc., and as a consequential relief he unambiguously was seeking a decree for possession of suit land by further asking for the demolition of the superstructure existing thereupon---Relief for possession claimed by plaintiff upon proper construction of the plaint and the frame of the suit was merely ancillary, incidental, consequential and dependent upon the primary relief of cancellation of the documents which was the basic and the foundational relief being sought---Where the main relief was time barred and the bar was not surmounted by the plaintiff, the incidental and consequential relief had to go away along with it and the suit was liable to be dismissed on account of being time barred---Plaintiff had knowledge of the general power of attorney and all the transaction(s) of sale in favour of third party and the appellant made through the defendant/attorney, but did not bring any legal action under S.39 of the Specific Relief Act, 1877, within the prescribed period of (3 years) limitation per Art.91 of First Schedule of the Limitation Act, 1908---Suit filed by the plaintiff was, thus, barred by time and was accordingly dismissed---Appeal was dismissed accordingly.

(b) Limitation Act (IX of 1908)---

----S. 3 & Preamble---Law of limitation---Object, scope and significance.

Law of limitation was founded upon public policy and State interest, and it was vital for an orderly and organized society and the people at large, who believed in being governed by systemized law. The obvious object of law of limitation was that if no time constraints and limits were prescribed for pursuing a cause of action and for seeking reliefs/remedies relating to such cause of action, and a person was allowed to sue for the redressal of his grievance within an infinite and unlimited time period, it shall adversely affect the disciplined and structured judicial process and mechanism of the State, which was sine qua non for any State to perform its functions within the parameters of the Constitution and the rule of law.

Law of limitation was considered prescriptive and preventive in nature and served as a major deterrent against the factors and the elements which could affect peace, tranquility and due order of the State and society. The law of limitation required that a person must approach the Court and take recourse to legal remedies with due diligence, without dilatoriness and negligence and within the time provided by the law; as against choosing his own time for the purpose of bringing forth a legal action at his own whim and desire. Because if that was so permitted to happen, it shall not only result in the misuse of the judicial process of the State, but shall also cause exploitation of the legal system and the society as a whole. This was not permissible in a State which was governed by law and Constitution.

The object of the law of limitation and the law itself, prescribing time constraints for each cause or case or for seeking any relief or remedy had been examined by the courts in many a cases, and it had been held to be a valid piece of legislation, and law of the land. Law of limitation should be strictly construed and applied in its letter and spirit, and by no stretch of legal interpretation it could be held that such law was merely a technicality and that too of procedural nature. Rather from the mandate of S.3 of the

Limitation Act, 1908 it was obligatory upon the court to dismiss a cause/lis which was barred by time even though limitation had not been set out as a defence. This showed the imperative adherence to and the mandatory application of such law by the courts. Law providing for limitation for various causes/reliefs was not a matter of mere technicality but foundationally of the "LAW" itself.

Atta Muhammad v. Maula Bakhsh and others 2007 SCMR 1446 ref.

(c) Limitation Act (IX of 1908)---

----S. 3 & First Sched.---Suit---Several causes of action---Multiple remedies/relief sought---Limitation---Scope---Plaintiff joining several causes of action and seeking multiple remedies/relief in the suit---Primary remedy/relief---Ancillary, incidental and consequential remedies/relief---Question as to whether the cause of action/remedy entailing the maximum period of limitation should necessarily and mandatorily be resorted to and should cover the question of limitation for the purposes of the whole suit, regardless of whether the suit was barred by time for other cause(s) of action or relief---To ascertain the application of the correct Article from the First Schedule to the Limitation Act, 1908, the frame of the suit should be considered, adverted and adhered to---Test for determining the period of limitation was to see the true effect of the suit and not its formal or verbal description---Legal aspect (of the suit) should be examined by taking into consideration the facts of each case and particularly the frame and object of the suit, taking inter alia further into account the contents of the plaint itself---Point to be determined was what main relief was being sought by the plaintiff and whether the other remedies asked for (which may be carrying longer period of limitation) were ancillary, dependent and consequential to the main relief---Where the main/basic/foundational relief being sought was time barred and the bar was not surmounted by the plaintiff, the incidental and consequential relief had to go away along with it and the suit was liable to be dismissed on account of being time barred.

Mst.Fattan Bi and 2 others v. Fateh Muhammad and 6 others PLD 1974 Lah. 458; Janki Kunwar v. Ajit Singh 15 Cal. 58 [Privy Council] and Bashir Ahmad v. Partab 1989 MLD 4314 ref.

(d) Qanun-e-Shahadat (10 of 1984)---

----Art. 114---Estoppel---Scope---Where a person was aggrieved of a fact, he had a right, rather a duty to object thereto to safeguard his right, and if such a person did not object, he shall be held to have waived his right to object and subsequently shall be estopped from raising such objection at a later stage---Person was estopped by his own conduct, if he though was aware of certain fact(s), which was likely to cause harm to his rights and adversely affect him and was prejudicial against him, avowedly or through some conspicuous act or by omission, intentionally permitted and allowed another person to believe a thing to be true and act on such belief without taking any steps to controvert or nullify such adverse fact and instead he slept over the matter---Such waiver or estoppel may arise from mere silence or inaction or even inconsistent conduct of a person.

(e) Qanun-e-Shahadat (10 of 1984)---

----Art. 114---Contract Act (IX of 1872), Ss. 203, 206 & 207---Specific Relief Act (I of 1877), S. 39 --- Suit for cancellation of general power of attorney, and consequential sale agreement and sale deed---Estoppel---Scope---Silence and inaction on part of plaintiff in safeguarding his right---Effect---Waiver of right to object---Suit plot was exempted in favour of plaintiff/respondent by the Development Authority as compensation for acquired land---Plaintiff purportedly executed and got registered an irrevocable general power of attorney in favour of the defendant/attorney---Defendant pursued the exemption of the suit plot with the Development Authority on behalf of the plaintiff---Subsequently defendant on basis of the power of attorney sold out the suit plot to a third person, who in turn sold it to the appellant---About 16 years after the date of execution/registration of the general power of attorney in favour of defendant, plaintiff filed a suit for cancellation of documents and possession of suit land alleging that the power of attorney, sale agreements and sale deeds were the result of fraud, forgery, misrepresentation and manipulation---Validity---Plaintiff admittedly came to know about the general power of attorney in favour of defendant in the year 1971, but did not take recourse to the proper legal action---Plaintiff according to his own statement was aware of the sale having been made in favour of third party in 1974, but no action was taken for assailing the same in time and he remained silent---General power of attorney which was the basis of alleged fraud was undisputedly in the knowledge of the plaintiff since 1971, but he slept over the matter, and allowed the said power of attorney to be utilized against his interest, which culminated into the sale firstly in favour of third party and thereafter in favour of the appellant---Defendant in fact virtually procured the exemption of the suit plot on the basis of the said power of attorney, and thereafter entered into an agreement with the Development Authority---Plaintiff having come to know of the power of attorney neither sought revocation of the same as per S.203 of the Contract Act, 1872, nor issued a notice for its revocation or renunciation according to Ss.206 & 207 of the Contract Act, 1872 or a public notice to renounce the same---Plaintiff since the year 1971 never even bothered to visit the suit land to see its physical condition, whether it was vacant or had been constructed upon---All such facts put together led to the conclusion that the rule of estoppel squarely operated against the plaintiff, within the purview of Art.114 of Qanun-e-Shahadat, 1984---Plaintiff in the facts and circumstances of the case was estopped by his own conduct from filing the suit--- Appeal was dismissed accordingly.

(f) Specific Relief Act (I of 1877)---

----S. 39---Transfer of Property Act (IV of 1882), S. 54---Contract Act (IX of 1872), S. 182---Suit for cancellation of registered power of attorney and sale deed---Plea of fraud and fabrication---Burden of proof---Scope---Where plaintiff (alleged executant) himself was challenging the power of attorney and consequential sale deed, and all such documents were registered with the sub-Registrar, it was the plaintiff's duty to bring on record the said documents and discharge the initial burden by establishing that they were invalid.

Per Ejaz Afzal Khan, J; disagreeing with Mian Saqib Nisar, J. [Minority view]

(g) Specific Relief Act (I of 1877)---

----Ss. 8 & 39 ---Transfer of Property Act (IV of 1882), S. 41---Qanun-e-Shahadat (10 of 1984), Art.129(g)---Suit for cancellation of general power of attorney, sale agreement and sale deed and recovery of possession of immoveable property---Claim based on documentary evidence---Documents not proved---Effect---Plaintiff, who was owner of suit plot, allegedly executed and got registered an irrevocable general power of attorney in favour of the defendant/attorney---Defendant on basis of such power of attorney sold out the suit plot to a third person, who in turn sold it to the appellant---Plaintiff filed a suit for cancellation of documents and possession of the suit land alleging that the power of attorney, sale agreements and sale deeds were obtained by fraud, forgery, misrepresentation and manipulation---Trial Court dismissed the suit, however, High Court, reversed findings of Trial Court and decreed the suit---Validity---Only question requiring consideration, in the present case was whether the appellant proved the documents which were sheet anchor of his claim---Case of the appellant was that he purchased the property in dispute from a third party, who purchased it from the defendant, who allegedly held a general power of Attorney on behalf of the plaintiff---Appellant did not prove any of the documents; he did not even examine the person who was holding general power of attorney on behalf of plaintiff to prove that in fact he was holding such power of attorney---Question as to who executed the power of attorney, who scribed it, who witnessed it, what was the consideration, if any, where and in whose presence was it paid, were the (sort of) queries to be addressed before examining the sustainability of the superstructure raised thereon---Appellant could not assert his title to the suit property when he neither proved the general power of attorney nor the deeds witnessing the alleged sale transactions nor confronted the plaintiff therewith---Failure of appellant to examine the attorney, the attesting witnesses of the power of attorney, the executant of the sale deeds and their attesting witnesses would give rise to a presumption under Art. 129(g) of Qanun-e-Shahadal, 1984, that the evidence which could be but was not produced, would, if produced, be unfavourable to the person withholding it---Appellant in such circumstances could not be termed a bona fide purchaser either so as to entitle him to protection under S.41 of the Transfer of Property Act, 1882---High Court had rightly decreed the plaintiff's suit---Appeal was dismissed accordingly. [Minority view]

Zar Wali Shah v. Yousaf Ali Shah and others 1992 SCMR 1778 and Syed Phul Shah v. Muhammad Hussain and 10 others PLD 1991 SC 1051 distinguished.

(h) Limitation Act (IX of 1908)---

----First Sched. Arts. 91 & 142---Specific Relief Act (I of 1877), Ss.8 & 39---Contract Act (IX of 1872), Ss. 2(g) & 17---Suit for cancellation of general power of attorney, sale agreement and sale deed and recovery of possession of immoveable property---Property transferred under a void and fraudulent agreement---Suit filed by owner of such property for its possession---Limitation period---Scope---Plaintiff, who was owner of suit property, allegedly executed and got registered an irrevocable general power of attorney in favour of the defendant/attorney---Defendant on basis of such power of attorney sold out the suit plot to a third person, who in turn sold it to the appellant---About 16 years after the date of execution/registration of the general power

of attorney in favour of defendant, plaintiff filed a suit for cancellation of documents and possession of the suit land alleging that the power of attorney, sale agreements and sale deeds were obtained by fraud, forgery, misrepresentation and manipulation---Trial Court dismissed the suit on the basis that it was barred by limitation, as limitation period for filing a suit for cancellation of documents was three years---High Court, however, decreed the suit on the grounds that suit being for possession of immovable property was filed within twelve years and was thus within the time limit---Legality---Appellant did not prove any of the documents on which he based his claim---Appellant neither proved the general power of attorney nor the deeds witnessing the alleged sale transactions nor confronted the respondent therewith---Plaintiff, in such circumstances, did not need to institute a suit for declaration or cancellation of documents, which had no existence---Plaintiff needed to institute a suit for possession on the basis of title within a period of 12 years, and that was what he did---Appellant who was left with sheer possession could not defend it in a possessory suit instituted by the plaintiff on the basis of title---Failure to question a transaction within the period of limitation would certainly matter, if it had any existence and effect, but where it had no existence and effect, it could not in any manner have life breathed into it, and passage of time or length of years could not give it any existence and effect---Building a castle of limitation in defence of such a transaction or its beneficiary on the basis of documents which were neither produced nor proved, would amount to building a castle in the air---Such exercise would be all the more unwarranted when the beneficiary (i.e. appellant) himself did not stir even a straw to prove his claim---Although the law of limitation ensured order in the society but it could not be used as a bulwark to perpetuate a gain having its origin in fraud which not only vitiated the most solemn transaction but the very fabric of the society---Shielding a transaction based on fraud and forgery would be more chaotic and disorderly than undoing it---Limitation could not shield a transaction having no effect and existence on account of fraud and forgery---Plaintiff, in the present case thus could not be non-suited on account of his failure to institute a suit for declaration or for cancellation of documents within the time provided by the statute---High Court had rightly held that plaintiff's suit was for possession of suit property, which was filed within the limitation period of twelve years---Appeal was dismissed accordingly.[Minority view].

Abdul Majeed and 6 others v. Muhammad Subhan and 2 others 1999 SCMR 1245; Mst. Hameeda Begum v. Mst. Murad Begum PLD 1975 SC 624 and Abdul Rehman and others v. Ghulam Muhammad through L.Rs and others 2010 SCMR 978 ref.

(i) Contract Act (IX of 1872)---

----Ss. 2(g) & (i)---Void and voidable transaction, setting aside of---Scope---When a transaction was voidable it was essential that it was set aside but if it was void the question of setting it aside would not arise.

Muhammad Akbar Shah v. Muhammad Yusuf Shah and others PLD 1964 SC 329 ref.

(j) Limitation Act (IX of 1908)---

----Preamble---Contract Act (IX of 1872), S. 17---Limitation could not shield a transaction having no effect and existence on account of fraud and forgery.

Abdul Majeed and 6 others v. Muhammad Subhan and 2 others 1999 SCMR 1245; Muhammad Akbar Shah v. Muhammad Yusuf Shah and others PLD 1964 SC 329; Mst. Hameeda Begum v. Mst. Murad Begum PLD 1975 SC 624 and Abdul Rehman and others v. Ghulam Muhammad through L.Rs and others 2010 SCMR 978 ref.

Gulzarin Kyanai, Senior Advocate Supreme Court, Atiq-ur-Rehman Kiyani, Advocate Supreme Court and Ch. Akthar Ali, Advocate-on-Record for Appellant.

Ahmed Awais, Advocate Supreme Court and Muhammad Akram Javed, Advocate Supreme Court for Respondent No.1.

Ex parte for Respondents Nos.2 to 4.

Date of hearing: 24th November, 2014.

JUDGMENT

MIAN SAQIB NISAR, J.---This appeal under the provisions of Article 185(2)(d) of the Constitution of Islamic Republic of Pakistan, 1973 entails the facts, in that, respondent No.1 (the respondent) was the owner of the land measuring 10 Kanals, 12 marlas, 184 sq. feet bearing khasra No. 5146 situated in lchhra, Lahore. Such land was acquired by Lahore Improvement Trust (LIT) for the purposes of one of its residential schemes, known as Garden Town Lahore, and in lieu thereof as a compensation for the noted acquisition, plot bearing No.197 measuring 3 kanals, 16 marlas, 192 sq. feet was exempted in favour of the respondent. The other relevant facts of the case, brought to notice of the Court by the learned counsel for the appellants are:- that the respondent executed and got registered an irrevocable general power of attorney (GPA) dated 27-5-1971 (registered on 28-5-1971) in favour of Fazal-e-Azeem, respondent No.2 (note:- this GPA subsequently but long after was challenged by the plaintiff/respondent No.1 in the suit on grounds that it is a forged and fabricated document) and on account of such authority an agreement to sell the exempted plot (suit plot) was executed by the attorney in favour of respondent No.3/defendant Manzoor Ahmed which was registered on 27-5-1971. On the basis of the GPA, respondent No.2 (the attorney) pursued for the exemption of the suit plot on behalf of the respondent with the LIT and entered into an agreement dated 6-7-1971 with the LIT (note: the predecessor body of LDA). Later on the said attorney sold out the suit plot to Manzoor Ahmed through a registered sale deed dated 8-4-1972, who was also delivered the possession of the plot. However, in the sale deed, the area of the plot mentioned was 2 kanals, 16 marlas and 192 sq. feet (which was less than the exempted plot), thus a ratification deed was executed by the attorney on 7-7-1972 to provide for the deficient area. Manzoor Ahmed vide registered sale deed dated 9-1-1973 sold the suit plot with possession to the appellant, who after seeking sanction of the building plan from the concerned authorities raised a bungalow during the period 1973-1974. The plot was also transferred in the name of the appellant by LIT vide letter dated 3-4-1973 (Mark A - Page 152 of C.A. No.413 of 2012). Be that as it may, on 14-6-1987 the respondent

filed a suit i.e. around 16 years after the date of execution/registration of the GPA for declaration, cancellation of the same (GPA) and the sale deed(s) mentioned above and obviously sought the possession of the plot as a consequential relief; the challenge to the document(s) was that those are the result of fraud, forgery, misrepresentation and manipulation. In the above context, following paragraphs of the plaint are relevant and thus reproduced below:--

"(3) That in the meanwhile, when the application filed by the plaintiff asking for exemption of a plot was pending before the defendant No.4 and necessary proceedings were afoot, the defendants Nos.1 and 2 collusion with each other and with the active connivance and support of one Muhammad Sharif, the then Qanungo, posted in the land acquisition collector's office i.e., office of the defendant No.4, forged a deed of General Power of Attorney purporting to have been executed by the plaintiff in favour of defendant No.1, conferring authority upon the latter to sell the above said plot preferably in favour of the defendant No.2 and got the said Deed registered by impersonation with the Sub-Registrar Lahore on 28-5- 1971 vide Deed No. 1036, Behi No.4, Volume No. 340 Pages 42 - 45. It is submitted that simultaneously another deed namely, an agreement to sell the plot in dispute was also forged, purporting to have been executed by the plaintiff in favour of defendant No.2 and the same was got registered on 27-5-1971 vide Deed No.7326, Behi No.1 Volume No.5242.

(4) That on the strength of the said forged General Power of Attorney, the defendant No.1 started pursuing the matter regarding exemption of plot with the LIT (L.D.A.) authorities without the knowledge of the plaintiff consequently an agreement dated 6th of July, 1971 came into being vis-a-vis the plot in dispute by virtue of which the defunct LIT agreed to sell to the plaintiff the plot in dispute under the terms and conditions incorporated in the said Deed. The defendant No.1 signed the said Deed in his alleged capacity of being the general attorney of the plaintiff.

(5) That the defendants Nos.1 and 2, in connivance with each other and in furtherance of the forgery and fraud committed by them, got a Sale Deed registered as Deed No.3241, Behi No.1, Volume 5332 pages 350 to 353 dated 8-4-1972 evidencing the plot in dispute to have been alienated by the defendant No.1 in his capacity as the alleged general attorney of the plaintiff in favour of the defendant No.2. Since in the said Deed, an area of 2 Kanals 16 Marlas, 192 sq. ft. out of the plot in dispute was described being the subject matter of the sale deed, the defendant No.1 through another deed No.7406 Behi No.1 Volume No.5374 registered on 7-7-1972 got the said area ratified as 3 Kanals, 16 Marks and 192 sq. ft.

(6) That the General Power of Attorney dated 28-5-1971 as well as the Agreement to sell dated 27-5-1971 were forged by the defendants Nos.1 and 2 and got the same registered fraudulently through another person falsely personating as the plaintiff. The plaintiff never executed the said documents in favour of the defendants Nos.1 and 2. The said instruments, being a forgery, are void ab initio and ineffectual against the right and title of the plaintiff to the plot in dispute. Consequently the Sale Deed executed by the defendant No.1 in favour of the defendant No.2 being a nullity in the eye of law is of no legal consequence and does not operate against the right and interest of the plaintiff.

(7) That the plaintiff, after coming to know of the forgeries and false personations resorted to by the defendants Nos.1 and 2, approached the defendant No.4 and apprised the authorities concerned of the fraud and mis representation committed by the defendants Nos.1 and 2. The L.D.A. authorities took up the proceedings to investigate matter and being convinced of the fraud perpetrated by the defendants Nos.1 and 2 reported the matter to the police recommending that a case be registered, but for ostensible reasons the police remained unmoved. Ultimately it was conveyed to the plaintiff by L.D.A. that in the circumstances of the case, the defendant No.4 was not legally competent to cancel the forged documents and that the plaintiff may have a resort to a competent forum to get the same adjudged as a forgery.

(8) That the plaintiff is the owner of the plot in dispute. The general power of attorney, the agreement to sell and the Sale Deed dated 28-5-1971 and 8-4-1972 respectively are of no legal effect against the rights of the plaintiff qua the plot in dispute. The further alienation of the plot in dispute by the defendant No.2 in favour so the defendant No.3 is also void, being a superstructure which must fall to the ground (emphasis supplied).

(a) That the documents, namely, the general power of attorney dated 28-5-1971 (2) the agreement to sell dated 27-5-1971 (3) the Sale Deed dated 8-4-1972 and (4) the rectification deed dated 7-7-1992 as described in paras 3 and 5 of the plaint having been brought into existence by forgeries and false personation are void ab initio and of no legal effect against the interest, right and title of the plaintiff to the plot in dispute.

(b) That the alienation of the plot in dispute in any manner made by the defendant No.2 in favour of the defendant No.3 is a nullity in the eye of the law;

(c) That the plaintiff is the owner of the plot in dispute and the defendant No.4 is bound under the law to treat him as such;

(d) May kindly grant by way of consequential relief a decree of possession of the plot in dispute directing the defendants Nos.2 and 3 to hand over vacant possession for the same by removing all superstructure if any, existing thereon."

From the contents of the plaint (reproduced above) it is unmistakably clear that the main attack of the respondent is upon the validity of the GPA and as a consequence thereof, the sale agreement, the sale deed in favour of Manzoor Ahmed, the ratification instrument in his favour; and the onward transfer to the appellant is dependent upon the outcome thereof. It is not the case of the respondent that the appellant in any way or manner is responsible for and is involved in any forgery or fraud as alleged by him in his plaint. Anyhow Fazal-e-Azeem and Manzoor Ahmed were arrayed as defendants Nos.1 and 2. Manzoor Ahmed abstained from contesting the matter; Fazal-e-Azeem filed his written statement and denied the allegations made in the plaint. However the appellant was the real contestant of the suit. And out of the pleadings of the parties, following issues, which are relevant for the purposes of our opinion were framed:--

"(1) Whether the suit is barred by limitation? OPD

(5) Whether the plaintiff is estoppel to file the suit? OPD

(8) Whether the general power of attorney dated 28-5-1971, agreement to sell dated 27-5-1971, sale deed dated 8-4-1972 and rectification deed dated 7-7-1972 are the results of forgery and mis-representation, void ab initio and ineffective over the rights of the plaintiff,' OPP

(10) Relief"

While giving its findings upon issues Nos.1 and 5 in favour of the appellant and issue No. 8 against the respondent, the learned trial court was pleased to dismiss the suit vide judgment and decree dated 20-12-1990. The respondent filed an appeal against the aforesaid verdict which was disallowed. However, in the revisional jurisdiction invoked by the said respondent, the learned High Court has set aside the two judgments and decrees of the courts below and decreed the suit filed by the respondent. Primary reason in this regard is that the appellant being the beneficiary has failed to prove the documents impugned in the suit, particularly the GPA. The learned High Court, also held that the suit being for possession of immovable property was filed within twelve years and was thus within time.

2. Learned counsel for the appellant has argued that, neither from the oral nor from the documentary evidence was it proved by the plaintiff-respondent that the GPA was invalid and was the result of fraud, forgery and fabrication etc.; in his cross-examination, the respondent in specific terms has admitted that in the year 1971 he had come to know about the disputed GPA; and also unequivocally in his examination-in-chief stated that in the year 19741 he attained the knowledge of the sale of the suit property, yet he did not file any suit challenging the transaction(s), thus the suit was hopelessly barred by time; the property in question was exempted in favour of the respondent through Fazal-e-Azeem as the former never pursued the exemption matter with LIT, whereas the attorney actively followed/pursued on the basis of the said GPA, to which the respondent never objected, rather in the situation. he allowed the attorney to act upon the GPA, which reflects the consent of the respondent, thus he would be estopped by his own conduct from challenging the same (i.e. GPA) and the transaction(s) made by the attorney in favour of Manzoor Ahmed and the following sale in favour of the appellant; the superstructure over the property which was constructed by the appellant after obtaining the necessary sanctioned plan from the Lahore Improvement Trust has existed since 1973-74, but the respondent still did not file any suit either challenging the sale transaction(s) (particularly of the appellant) or sought the possession of the plot by seeking removal of the superstructure within the prescribed period of three years; rather kept silent throughout till the filing of the suit by which time the limitation for seeking annulment of the GPA and sale deeds in favour of Manzoor Ahmed and the appellant, had expired; besides, this silence on part of the respondent is relevant for attracting rule of estoppel against the respondent. In this context extensive reference to various portions of the statement of the respondent has been made. It is argued that neither a case was made out in terms of section 18 of the Limitation Act, 1908 (the Act) by the respondent nor was any ground for exemption from the limitation period specifically and precisely set out in the plaint per the mandate of Order VII, Rule 6, C.P.C.; the respondent also did not file any separate

application for seeking exemption of limitation under section 14 of the Act. Along with the present appeal, the appellant has also filed a C.M.A. No.2009 of 2012 asking permission of the court to place on record the attested copies of the registered power of attorney (GPA), copy of the registered sale deed of Manzoor Ahmed, copy of registered sale deed of the appellant and also the sanctioned site plan of the property in his favour. It has been urged by the appellant that in the interest of justice, the court should allow such additional evidence and/or look into these documents, because those have been assailed by the respondent himself, but no evidence was led by him to discharge the initial onus of proving those to be invalid on any account. For the above plea(s) reliance has been placed upon Syed Phul Shah v. Muhammad Hussain and 10 others (PLD 1991 SC 1051) and Zar Wali Shah v. Yousaf Ali Shah etc. (1992 SCMR 1778). By relying upon Maharaja of Faridkot State v. Anant Ram and others (AIR 1929 Lah 1) without being prejudicial to his own case it was also urged that even if the GPA and the sale of Manzoor turns out to be fraudulent etc., the protection of bona fide purchaser shall be available to the appellant. The learned counsel further submits that the learned High Court in the impugned judgment has itself concluded that the power of attorney in favour of Fazal-e-Azeem is a valid document, but despite the above, the revision petition has been allowed. The learned High Court has reversed the concurrent findings of the two courts below without taking into account evidence of the parties on the record or meeting the reasoning assigned by the said courts on the question of estoppels and/or limitation and has totally ignored that in the facts and circumstances of the case the respondent was not entitled to the relief of possession of the suit plot.

3. Contrarily, learned counsel for the respondent has argued that the original power of attorney as well as the sale deeds have not been brought on the record, therefore, such documents cannot be taken into account; the respondent per the cross-examination had come to know of the transfer of the suit property in the year 1978 (per examination in chief it was 1974) in favour of Manzoor Ahmed and calculating the period of 12 years under Article 142 of the Limitation Act, 1908, the limitation would expire in the year 1990 and resultantly, the suit brought in the year 1987 was well within time; that the date of the starting of the limitation shall be from the date of knowledge of the respondent. In the instant case, the respondent clearly has mentioned that he learnt about the transaction in 1978. It is vehemently pleaded that as the appellant has failed to prove the execution of the power of attorney, the transaction of sale in favour of Manzoor Ahmed and his own sale shall have no legal sanctity. Lastly it is submitted that in the facts and circumstances of the case, the rule of estoppel shall not operate against the respondent. As regards the proof of the execution of the document impugned in the suit, it is argued that the appellant being the beneficiary thereof had to prove the same. Reliance on this issue has been placed on Abdul Majeed and 6 others v. Muhammad Subhan and 2 others (1999 SCMR 1245).

4. Heard. On the basis of the record, the reasoning given in the impugned judgment, the judgments and decrees of the courts below and submissions made by the learned counsel for the parties, we are of the view that four important propositions for resolution have emerged in this case: (1) whether the suit filed by respondent against the appellant etc. was within time; (2) whether the respondent in the facts and circumstances of the case is estopped by his own conduct from filing the suit; (3) whether the general power of attorney in favour of Fazal-e-Azeem which is the basic

document in this case is forged and fabricated and, therefore, the two transactions of sale i.e. one made by Fazal-e-Azeem in favour of Manzoor Ahmed and the second by Manzoor in favour of the present appellant cannot be sustained; (4) whether the non-production of the original power of attorney, the sale deed/ratification deed in favour of Manzoor and the sale deed of the present appellant shall in the facts and circumstances of the case adversely affect the rights of the appellant and shall be fatal to his pleas raised in defence.

PROPOSITION NO. 1

5. On the question of limitation, the learned High Court has concluded that according to the case of the respondent, he came to know of the sale deed in the year 1978 and as the suit was filed on 4-6-1987, the same is within time. Obviously the suit has been treated by the Court to be the one for possession and Article 142 of the Limitation Act, 1908 has been resorted to, besides some benefit of section 14 of the Act is seemingly also given to the respondent. But the learned court unfortunately has failed to consider and appreciate the foundational facts of the case as put forth by the respondent in the plaint and those emerging on the record, i.e. as from the pleadings of the parties, and the evidence produced by them; the reasoning assigned by the two courts on this point has been ignored; it has also eluded the attention of the learned High Court that basically the suit filed by the respondent was for cancellation of the documents on the allegations of fraud, forgery and misrepresentation, which (suit) shall squarely fall within the purview of section 39 of the Specific Relief Act and per Article 91 of the Act, the prescribed period of limitation shall be three years. Anyhow before proceeding further qua this proposition, we find it expedient to briefly touch upon the nature, the object and the significance of the law of limitation. From the various dicta/pronouncements of the superior court, it can be deduced without any fear of contradiction that such law is founded upon public policy and State interest. This law is vital for an orderly and organized society and the people at large, who believe in being governed by systemized law. The obvious object of the law is that if no time constraints and limits are prescribed for pursuing a cause of action and for seeking reliefs/remedies relating to such cause of action, and a person is allowed to sue for the redressal of his grievance within an infinite and unlimited time period, it shall adversely affect the disciplined and structured judicial process and mechanism of the State, which is sine qua non for any State to perform its functions within the parameters of the Constitution and the rule of law. The object of the law of limitation and the law itself, prescribing time constraints for each cause or case or for seeking any relief or remedy has been examined by the courts in many a cases, and it has been held to be a valid piece of legislation, and law of the land. It is 'THE LAW" which should be strictly construed and applied in its letter and spirit; and by no stretch of legal interpretation it can be held that such law (i.e. limitation law) is merely a technicality and that too of procedural in nature. Rather from the mandate of section 3 of the Limitation Act, it is obligatory upon the court to dismiss a cause/lis which is barred by time even though limitation has not been set out as a defence. And this shows the imperative adherence to and the mandatory application of such law by the courts. The said law is considered prescriptive and preventive in nature and is held to mean and serve as a major deterrent against the factors and the elements which would affect peace, tranquility and due order of the State and society. The law of limitation requires

that a person must approach the Court and take recourse to legal remedies with due diligence, without dilatoriness and negligence and within the time provided by the law; as against choosing his own time for the purpose of bringing forth a legal action at his own whim and desire. Because if that is so permitted to happen, it shall not only result in the misuse of the judicial process of the State, but shall also cause exploitation of the legal system and the society as a whole. This is not permissible in a State which is governed by law and Constitution. And it may be relevant to mention here that the law providing for limitation for various causes/reliefs is not a matter of mere technicality but foundationally of the "LAW" itself. In the above context, a judgment of this Court reported as Atta Muhammad v. Maula Bakhsh and others (2007 SCMR 1446) has thrown considerable light on the subject and has provided guidance, in the following words:--

"We may add that public interest require that there should be an end to litigation. The law of limitation provides an element of certainty in the conduct of human affair. Statutes of limitation and prescription are, thus, statues of peace and repose. In order to avoid the difficulty and errors that necessarily result from lapse of time, the presumption of coincidence of fact and right is rightly accepted as final after a certain number of years. Whoever wishes to dispute this presumption must do so, within that period; otherwise his rights if any, will be forfeited as a penalty for his neglect. In other words the law of limitation is a law which is designed to impose quietus on legal dissensions and conflicts. It requires that persons must come to Court and take recourse to legal remedies with due diligence."

The question which further arises for determination in this case on the point of limitation is whether in all those cases, like the one in hand, where a plaintiff has joined several causes of action and has sought multiple remedies, the cause of action/remedy entailing the maximum period of limitation should necessarily and mandatorily be resorted to and should cover the question of limitation for the purposes of the whole suit, regardless of whether the suit is barred by time for other cause(s) of action or relief. Suffice it to say that this is not the absolute rule of law, rather legal aspect should be examined by taking into consideration the facts of each case and particularly the frame and object of the suit, taking inter alia further into account the contents of the plaint itself. And thus it should be determined what main relief is being sought by the plaintiff and whether the other remedies asked for (may be carrying larger period of limitation) are ancillary, dependent and consequential to the main relief. The ratio of catena of judgments of the superior courts are to the effect, that in order to ascertain the application of correct Article of limitation to a particular suit, the frame of the suit should be considered, adverted and adhered to (as mentioned above). The true test for determining the period of limitation is to see the true effect of the suit and not its formal or verbal description[(1)]. The Privy Council in a matter reported as Janki Kunwar v. Ajit Singh (15 Cal. 58), in which the basic and frontal attack was to the validity of certain documents, but the relief of possession was also claimed by the plaintiff, while resolving the question of limitation, opined as follows:--

"Then the Judicial Commissioner deals with the case in a different way. He says the suit is essentially a suit for the possession of immovable property, and as such falls

within the 12 years' limitation. Now he is clearly wrong there. It was not a suit for the possession of immovable property in the sense to which this limitation of 12 years is applicable. The immovable property could not have been recovered until the deed of sale had been set aside, and it was necessary to bring a suit to set aside the deed upon payment of what had been advanced, namely, the Rs.1,25000. Therefore there has been on the part of the lower Courts a misapprehension of the law of limitation in this case. Their Lordships are clearly of opinion that the suit falls within Article 91 of the Act XV of 1877, and is therefore barred".

In another case reported as Bashir Ahmad v. Partab (1989 MLD 4314) it was held:--

"The next question which falls for consideration is whether suit filed by the appellant was barred by time. In the suit the appellant challenged the validity of sale-deed allegedly executed by Arjan deceased in favour of respondent on the ground of fraud and misrepresentation. Article 144 of the Limitation Act was not attracted to the suit merely because a prayer for possession of land was made. Since the appellant could not be granted relief regarding possession of land unless he had crossed the hurdle of sale-deed in favour of respondent therefore the provision of Limitation Act prescribing limitation for getting a document on the basis of fraud declared as void would be applicable. In the facts and circumstances as pleaded in the plaint the suit is mainly for a declaration that the said sale-deed was void having been procured through fraud and relief of possession is in the nature of consequential relief therefore Article 91 of the Limitation Act is applicable. This Article prescribed a period of three years from the date when the alleged fraud came to the knowledge of the plaintiff".

In our candid view if an instrument is alleged to have been obtained by fraud, undue influence, coercion or misrepresentation, it is not a document which can be held to be void ab initio or on the face of it void, but it requires to be determined and adjudged by the court of law as voidable or void as the case may be and in such an eventuality, the matter shall squarely be covered by section 39 of the Specific Relief Act, which mandates:--

"39. When cancellation may be ordered.-- Any person against whom a written instrument is void or voidable, who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to have it adjudged void or viodable; and the Court, may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

If the instrument has been registered under the Registration Act, the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.

Illustrations

(a) .....

(b) A conveys land to B, who bequeaths it to C and dies. Thereupon D gets possession of the land and produces a forged instrument stating that the conveyance was made to B in trust for him. C may obtain the cancellation of the forged instrument.

(c) .....

(d) .....

And where the case is basically and primarily covered by section 39 ibid, Article 91 of the Limitation Act shall be attracted, which ordains and reads as under:--

Description of suit	Period of limitation	Time from which period begins to run
91. To cancel or set aside an instrument not otherwise provided for.	Three years	When the facts entitling the plaintiff to have the instrument cancelled or set aside became known to him.

In the instant case, the contents of the plaint, especially prayer part thereof which has been reproduced in one of the preceding paragraphs of this opinion clearly and undoubtedly envisages that the respondent is challenging the documents as being invalid against him on the ground of fraud, forgery, misrepresentation etc., and as a consequential relief [per prayer clause (d)] he unambiguously is seeking a decree for possession of the plot in dispute by further asking for the demolition of the superstructure existing thereupon. This part of the relief upon proper construction of the plaint and the frame of the suit is merely ancillary, incidental, consequential and dependent upon the primary relief of cancellation of the documents which is the basic and the foundational relief being sought (emphasis supplied). If the main relief is time barred and the bar is not surmounted by the respondent, the incidental and consequential relief has to go away along with it and the suit is liable to be dismissed on account of being time barred.

6. In context of the above, let us examine when did a cause of action arise in favour of the respondent entitling him to seek the relief of cancellation of document(s); and in this regard it may be pertinent to mention here, that in his examination-in-chief, the plaintiff in unequivocal terms has stated

In the cross-examination, he in similar words have stated

Though in the cross-examination, he mentioned that

In the examination-in-chief he states to have moved an application with martial authorities on the basis of which a case was registered against Chaudhry Muhammad Sharif, who is close relative of Fazal-e-Azeem and in the cross-examination he admitted that the application was moved in February/March, 1971; he further admits

He also admitted that he saw the said plot about 6/7 years before the date of his statement (which was recorded on 30-1-1989) and at that time the bungalow had been constructed thereupon. Moreover unimpeachable evidence was adduced by the appellant in the form of the site plan for the construction of bungalow, which was approved by the competent authority on 8-12-1973; the construction whereof was completed within two years; all the amenity connections such as electricity connection, water connection and gas connection were installed during that period and had been existing since then despite which the respondent never approached the court of law. All these factors put together leave no room for doubt, that the respondent had the knowledge of the GPA since 1971. He also had the knowledge about all the transaction(s) of sale in favour of Manzoor and the appellant made through the attorney Fazal-e-Azeem on the basis of GPA since 1974, but did not bring any legal action under Section 39 ibid within the prescribed period of limitation per Article 91. Therefore, we are of the candid view that the suit filed by the respondent was barred by time.

With regards to the view set out by the learned High Court with reference to the proposition of limitation, that the respondent is entitled to the benefit of section 14 of the Limitation Act, suffice it to say that such provision neither was attracted to the present case nor a case had been set out by the respondent in terms of the section ibid as is required under Order VII, Rule 6, C.P.C. or as per section 18 of The Act; besides the case for exemption from limitation on that account was neither pleaded in the plaint nor a separate application under section 14 as is expedient under the law was moved by him. Besides, section 14 is also not applicable to the matter, because such provision envisages a situation where a litigant has approached a court with bona fide which (court) has no jurisdiction and his suit is dismissed on account of the above jurisdictional reason. In such an eventuality, the time spent in pursuing the matter bona fide before a court having no jurisdiction is to be excluded. This fact again has to be pleaded and specific time period as to when the proceedings before the court having no jurisdiction were initiated and when the same were terminated have to be spelt out, so as to bring the case within the purview of section 14 ibid and to claim the benefit thereof. Besides any move to martial law authorities shall not be covered by the mandate of this section.

7. In view of the above, we hold that the findings of the learned High Court on the issue of limitation are not in consonance with the law on the basis of the facts of this case and thus needs to be reversed. Therefore, by setting aside such finding and upholding the findings of the first two courts the suit of the respondent is liable to be dismissed on the ground of limitation alone.

PROPOSITION NO.2:

8. According to Article 114 of the Qanun-e-Shahadat, 1984 which reads as "114. Estoppel: When one person has by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing", a person is estopped by his own conduct, if he though was aware of certain fact(s), which is likely to cause harm to his rights and adversely affect him and is prejudicial against him, avowedly or through some conspicuous act or by omission, intentionally permits and allows another person to believe a thing to be true and act on such belief without taking any steps to controvert or nullify such adverse fact and instead he sleeps over the matter. In other words, where a person who is aggrieved of a fact, he has a right, rather a duty to object thereto for the safeguard of his right, and if such a person does not object, he shall be held to have waived his right to object and subsequently shall be estopped from raising such objection at a later stage. Such waiver or estoppel may arise from mere silence or inaction or even inconsistent conduct of a person. In the facts of the present case the silence and the conduct of the respondent, which has been extensively highlighted while dilating upon proposition No.1, is now being relied upon. We would also reiterate some of the relevant facts here, such as that the respondent admittedly came to know about the GPA in favour of Fazal-e-Azeem in the year, 1971 and allegedly moved to the martial law authorities, but did not take recourse to the proper legal action; according to his own statement he was aware of the sale having been made in favour of Manzoor in 1974, but no action was taken for assailing the same in time and he remained silent. The GPA which is the basis of alleged fraud as mentioned above undisputedly was in the knowledge of the respondent since 1971, but he slept over the matter, and allowed the said GPA to be utilized against his interest, which culminated into the sale firstly in favour of Manzoor Ahmed and thereafter by Manzoor Ahmed in favour of the present appellant. Above all this power of attorney was acted upon and Fazal-e-Azeem in fact virtually procured the exemption of the suit plot on the basis of the said power of attorney; and thereafter entered into an agreement with the LIT (referred to above). The respondent having come to know of the power of attorney did not seek the revocation of the GPA per section 203 of the Contract Act, 1872 or ever issued a notice for the revocation or renunciation of the GPA according to Sections 206 and 207 of the Act ibid or a public notice to renounce the same. He since the year, 1971 never ever bothered to visit the plot in question to see its physical condition, whether it was vacant or had been constructed upon. All these facts put together lead us to no conclusion other than that the rule of estoppel squarely operates against the respondent, within the purview of section 114 ibid. Therefore, the view and the findings of the first two courts were valid in law, and the opinion formed by the learned High Court, which overlooked the above aspects, is untenable, cannot be sustained and is hereby set aside.

PROPOSITION NO.3:

9. Attending to this proposition, it may be mentioned that the respondent has alleged that the GPA was forged and fabricated by Fazal-e-Azeem in connivance and collusion

with Ch. Muhammad Sharif. But on the basis of the evidence, the two courts of fact (the trial and appellate court) have discarded this plea of the respondent and there was no misreading or non-reading of the evidence in this regard or any other legal error committed by the courts. However, the learned High Court has strangely dealt with this aspect of the matter, it has not reversed the findings of the courts below, rather has affirmed it while concluding that "The claim of respondent No.3 is that the attorney Fazal-e-Azeem had sold the property to respondent No.2 who further alienated the same to respondent No.3. However, the petitioner-plaintiff says that the attorney in connivance with other defendants have committed forgery with the general power of attorney given to him and the sale deeds are also result of fraud and impersonation. The alleged forgery in the power of attorney is with regard to the portion of the power of attorney whereby the attorney was authorized to sell the property in question. On the other hand, respondent-defendant No.1 (attorney), in para 4 of his written statement, categorically denies of having signed the alleged sale deed. In para 5, he denies that he forged the power of attorney. In the same para, he further denies that he got registered the power of attorney. He also denies that he has committed any forgery with the power of attorney given to him. As there appears no difference in writing style etc. of the said portion from the rest of contents of the power of attorney, I am not convinced with the contention of learned counsel for the petitioner that the power of attorney was forged one (emphasis supplied by us)". From the above opinion of the learned High Court it is clear that the power of attorney was held to be a valid document, thus it is without sound reasoning to declare that the said sale was invalid when the attorney has sold the plot to Manzoor while acting upon such GPA. Besides, it was the duty of the respondent to have discharged his initial burden of showing that the registered power of attorney, which was being challenged after 16 years of having been acted upon, was a forged and fabricated document; the respondent having known about the existence of the same since 1971 remained silent; no steps were taken to revoke the same; sale was made in favour of Manzoor on the basis of the same. However no initial burden in this context was discharged by the respondent, we are thus constrained from holding that the registered GPA impugned by the respondent was invalid, as even according to the decision of the learned High Court the GPA was not a forged or fabricated document. In the given situation, transaction made by the attorney in favour of Manzoor Ahmed and further by latter in favour of the appellant cannot be held to be voidable or void transactions.

PROPOSITION NO.4:

10. One of the reasons which has been given by the learned High Court for interfering in the matter and for upsetting the two concurrent decisions of the courts below, is that the appellant being the beneficiary of the transaction has failed to produce and prove the original power of attorney, sale deed of Manzoor Ahmed and his own sale deed. In this regard it may be mentioned that the respondent himself was challenging the said documents and all these documents were registered with the sub-Registrar, and it was therefore his duty to bring on record the said documents and discharge the initial burden by establishing that those are invalid documents, but this has not been done by him. Besides, when the learned High Court on the basis of evidence had formed the view that GPA in favour of Fazal-e-Azeem was not forged, in such a situation the non-production of the sale deed(s) of Manzoor and the appellant was not of much

relevance. Because when the GPA was genuine, obviously it conferred an authority on the attorney to make the sale of the property and therefore the sale(s) would be valid. If the case of the appellant was that the attorney has not sold the property and not executed the sale agreement, the sale deed and the ratification deed in favour of Manzoor, he should have set out such a case and examined Fazal -e-Azeem. But this is not even the case of the respondent in the plaint. Therefore, nothing much depends, hinges, or turns on the non-production of the said documents by the appellant or adversely affect his case. In light of the above, the reason/finding of the learned court in the context of this proposition, also has no substance and is hereby set aside.

11. In view of the aforementioned reasons, we allow this appeal in terms of the short order of even date which reads as under:--

"For the detailed reasons to follow, by majority of two to one, this appeal is allowed. The impugned judgment and decree of the learned Revisional Court is set aside and the judgments and decrees of the Courts below are upheld, whereby the suit filed by respondent No.1 against the appellant stands dismissed."

Sd/-
Mian Saqib Nisar, J

Sd/-
Amir Hani Muslim, J

I do not agree with the view expressed my brothers. My reasons, in this behalf are recorded separately.

Sd/-
Ejaz Afzal Khan, J

EJAZ AFZAL KHAN, J.---I have gone through the judgment authored by my learned brother Mr. Justice Mian Saqib Nisar. With due deference to my brother I do not agree with the premises and the conclusion recorded by him for allowing the appeal and reversing the judgment of the learned High Court. My reasons recorded in this behalf are as under:

2. The only question requiring consideration in this case is whether the appellant proved the documents which are sheet anchor of his claim. The case of the appellant is that he purchased the property in dispute from respondent No.3 who purchased it from respondent No.2 who was allegedly holding a General Power of Attorney on behalf of respondent No.l. The bizarre and boggling part of the case is that the appellant did not prove any of the documents. He didn't even examine the person who was holding general power of attorney on behalf of respondent No. 1 to prove that in fact he was holding such power of attorney. Who executed it, who scribed it, who witnessed it, what was the consideration if it was for consideration, where and in whose presence was it paid are the queries to be addressed before examining the sustainability of the superstructure raised thereon. When asked as to how could the appellant assert his title to the property in dispute when he neither proved the general power of attorney nor the

deeds witnessing the alleged sale transactions nor confronted the respondent therewith, the learned Senior Advocate Supreme Court for the appellant straightaway asked for permission to examine the additional evidence by citing the judgments rendered in the cases of "Zar Wali Shah v. Yousaf Ali Shah etc. (1992 SCMR 1778) and "Syed Phul Shah v. Muhammad Hussain and 10 others" (PLD 1991 SC 1051).

3. Respondent No. 1 on the other hand stated that he came to know about transfer of the plot in 1978. He stated that he never executed any general power of attorney nor agreement to sell. He also stated that he never appeared before the Sub-Registrar for registration of general power of attorney or agreement to sell. He stated that he moved an application in February or March, 1971 before the LDA for allotment of plot but the officer incharge delayed the matter on one pretext or another. He also stated to have moved an application before the Martial Law Authority for the redressal of his grievance before instituting the suit but nothing would turn on it in terms of bar of limitation as it was moved somewhere in 1978 and not in 1971. He was subjected to a lengthy cross-examination but his statement went unshaken. What worsened the case of the appellant is that he failed to confront the respondent with any of the documents he based his claim on. His prayer for additional evidence cannot make it up even if allowed on the strength of the judgments rendered in the cases of "Zar Wali Shah v. Yousaf Ali Shah, etc" and "Syed Phul Shah v. Muhammad Hussain and 10 others" (supra).

4. Much stress has been laid by the learned Senior Advocate Supreme Court for the appellant on the failure of respondent No.1 to institute a suit for declaration and cancellation of documents within the period of limitation. But the respondent, in the matrix of the case did not need to institute a suit for declaration or cancellation of documents having no existence. What he needed was to institute a suit for possession on the basis of title within a period of 12 years. This is what he did. The appellant who is left with sheer possession cannot defend it in a possessory suit instituted by the respondent on the basis of title. The very prayer of the learned Senior Advocate Supreme Court for the appellant for additional evidence is an admission of the fact that the claim of the appellant is shorn of any basis. Failure to question a transaction within the period of limitation will certainly matter, if it has any existence and effect. But where it has no existence and effect and cannot in any manner have life breathed into it, passage of time or length of years cannot give it any existence and effect. The superstructure so raised is, therefore, not sustainable. It is indeed so nugatory and ineffectual that nothing can cure it. It is this type of transaction which need not be set aside. In the case of "Abdul Majeed and 6 others v. Muhammad Subhan and 2 others" (1999 SCMR 1245), a three member bench of this Court while dealing with a similar aspect held as under:--

"If the transaction which is sought to be set aside was a voidable one, it is essential that the transaction be set aside. If it be not voidable, but void, the question of setting it aside would not arise. As to whether a transaction is voidable or void there is a simple criterion: did the transaction create any legal effects, that is, did the transaction transfer, create or terminate or otherwise affect any rights? In a void transaction no legal effects are produced. In a voidable transaction legal effects are produced but some person has the right to avoid the transaction and if he exercises that option the

process by which rights were affected is reversed and the original situation as it existed before the transaction is restored (subject to adjustment of equities). If the Court which is dealing with the question of limitation reaches the conclusion after considering the evidence before it that the transaction in dispute by its own force produced legal effects it would be necessary that the transaction be set aside and limitation will be governed by the Article applicable to the setting aside of the transaction. If it comes to the conclusion that, by itself, the transaction produced no effects no need for setting it aside will arise. A voidable transaction should not be confused with a transaction which, pima facie, looks valid and in relation to which the burden of proof will be on the party alleging its invalidity. There may be a document in existence a registered deed of sale or mortgage or some other transaction, which is by presumption genuine and the person who purports to be its executant may have the burden on him to show that it is a forgery. Still it is not a voidable transaction because ultimately when the Court comes to the conclusion that it is a forgery it will be found that, in fact, the document never affected any right. This is the criterion for determining whether a document is void or voidable, its apparent validity or the question of burden of proof is in this respect irrelevant. No person is bound to sue for setting aside a document just because it is raising a presumption against him. There is no need for the person who is shown to be the executant of the forged document to sue for its cancellation or for setting it aside though he may be taking a risk in allowing the document stand, for proof of forgery may become difficult as time passes. A transaction which is not genuine may have been incorporoted even in the Revenue Records which have a presumption of correctness. Still there is no need to have the transaction set aside for Revenue Records are only evidence of it and do not affect title. It the Court finds that there is no true basis for the entry in the record of rights, its conclusion would be that there never did exist any transaction which affected any rights. "Setting aside" is wholly inappropriate for a document which has produced no legal effects though the expression is sometimes loosely used in respect of a declaration of invalidity of a document."

5. In the case of "Muhammad Akbar Shah v. Muhammad Yusuf Shah and others" (PLD 1964 SC 329), a five member bench of this Court, by drawing a sharp line of distinction between void and voidable, held that if a transaction is voidable it is essential that it be set aside but if it is void the question of setting it aside would not arise. The relevant paragraph deserves a glance which reads as under:--

"We turn now to the question of limitation. The suit before us is one for possession and prime facie should be governed by Article 142 or 144. It is a settled principle however, that when the relief which a plaintiff seeks cannot be granted unless he succeeds in securing as a foundation for his relief another relief the suit cannot be filed after the expiry of the limitation for a suit for such other relief. If this principle was not adopted the provisions of the Limitation Act would be defeated. If in order to obtain the relief of possession in this case it be essential for the plaintiff to secure a decree for setting aside the will before he is granted possession then the suit would be governed by the, Article which applies to a suit for setting aside the will. The question therefore is, whether it is essential for the plaintiff to secure a decree for setting aside the will. The principle which is applicable cannot be disputed either on authority or in reason. The principle is that if the transaction which is sought to be set aside was a voidable one, it

is essential that the transaction be set aside, if it be not voidable, but void, the question of setting it aside would not arise, As to whether a transaction is voidable or void there is a simple criterion: did the transaction create any legal effects, that is, did the transaction transfer, create or terminate or otherwise affect any rights in a void transaction no legal effects are produced. In a voidable transaction legal effects are produced but some person has the right to avoid the transaction and if he exercises that option the process by which rights were affected is reversed and the original situation as it existed before the transaction is restored (subject to adjustment of equities). If the Court which is dealing with the question of limitation reached the conclusion after considering the evidence before it that the transaction in dispute by its own force produced legal effects if would be necessary that the transaction be set aside and limitation will be governed by the Article applicable to the setting aside of the transaction. If it comes to the conclusion that by itself the transaction produced no effects no need for setting it aside will arise. It is necessary to state here that a voidable transaction should not be confused with a transaction which prima facie looks valid and in relation to which the burden of proof will be on the (party alleging its invalidity. There may be a document in existence) a registered deed of sale or mortgage or some other transaction, which is by presumption genuine and the person who purports to be its executant may have the burden on him to show that it is a forgery. Still it is not a voidable transaction because ultimately when the Court comes to the conclusion that it is a forgery it will be found that in fact the document never affected any right. That is the criterion for determining whether a document is void or voidable. Its apparent validity or the question of burden of proof is in this respect irrelevant. No person is bound to sue for setting aside a document just because it is raising a presumption against him. There is no need for the person who is shown to be the executant of the forged document to sue for its cancellation or for setting it aside though he may be taking a risk in allowing the document stands for proof of forgery may become difficult as time passes. A transaction which is not genuine may have been incorporated even in the revenue records which have a presumption of correctness. Still there is no need to have the transaction set aside for revenue records are only evidence of it and do not affect title. If the Court finds that there is no true basis for the entry in the record-of-rights its conclusion would be that there never did exist any transaction which affected any rights. "Setting aside" is wholly inappropriate for a document which has produced no legal effects though the expression is sometimes loosely used in respect of a declaration of invalidity of a document."

While illustrating the examples of voidable transactions, their lordships observed as under:--

"Examples of voidable transactions are a contract made under coercion or undue influence or even fraud, a compromise of a case by guardian of a minor without permission of the Court and an alienation of ancestral properly by a holder of such property under custom. All these transactions are good and valid and they do affect rights, but a person has the option to have undone what the transaction has done."

6. In the case of "Mst. Hameeda Begum v. Mst. Murad Begum" (PLD 1975 SC 624), a four member bench of this Court while dilating on the nature of instruments in terms of void and voidable and the treatment they deserve of legal plane, held as under:--

"From the language of the Article itself, it is clear that it will not apply when the cancellation of an instrument is not an essential part of the plaintiff's relief. An obvious case of this kind would be where the deed or instrument is ab initio null and void, in which case it can be treated as a nullity without having to be cancelled or set aside. If, on the other hand, the instrument is only voidable, then it would be necessary to have it set aside or cancelled in order to remove the impediment in the way of the plaintiff. It is perhaps not possible to enumerate exhaustively the circumstances which would render an instrument null and void, but it is at least clear that if the person who executes the document had no authority in law to do so, or if he had only a conditional authority to dispose of property, and the conditions under which authority could be exercised were not fulfilled, then the instrument could be regarded as null and void. Similarly, if the instrument is executed by a person suffering under a legal disability at the time of its execution, say by reason of minority, unsoundness of mind etc., the document would be null and void. If, however, the instrument is executed by a person competent to do so, but it is alleged that he was forced or persuaded to execute the same under coercion, fraud, misrepresentation or undue influence, then it would be a voidable instrument in accordance with the principles embodied in sections 19 and 19-A of the Contract Act. The instrument would remain operative as long as it was not set aside by a competent Court. As authority for this proposition, we may mention Redhu Ram v. Mohan Singh (AIR 1915 Lah. 20), Unni v. Kunchi Amma (ILR 14 Mad. 26) Mt. Izhar Fatima Bibi v. Mt. Ansar Fatima Bibi (AIR 1939 All. 348), Minalal Shadiram v. Kharsetji Jivajishet (ILR 27 Bom. 560), Janki Kunwar v. Ajit Singh (ILR 15 Cal. 58), Govindasamy Pillai v. Romaswamy Pillai (ILR 32 Mad. 72), Mahant Gyan Prakash Dos v. Mt. Dukhan Kuar (AIR 1938 Pat. 69), Sh. Ibrar Ahmed v. Mt. Kamni Begum (AIR 1938 All. 451), Ramchandra Jivaji Kanago v. Laxam Shrini Vas Naik (AIR 1945 PC 54)."

7. In the case of "Abdul Rehman and others v. Ghulam Muhammad through L.Rs and others" (2010 SCMR 978), a three member bench of this Court after considering a string of judgments, held as under:--

"8. In the instant case as discussed in paragraph 6 above, the Court having examined the evidence on record found that petitioner/defendants had failed to prove that Basharat Ali was a general attorney of the respondents/plaintiffs because neither the said alleged attorney was examined nor the attesting witnesses of the said document and even the document itself was not placed on record. The Court even went to the extent of holding that "the petitioner/defendants in order to protect their fraud have not intentionally produced general power of attorney." That being so, the transaction in question was a void transaction and the relevant Article would be Article 142 or 144 of the Limitation Act. The learned High Court has rightly decided the question of limitation."

8. Building a castle of limitation in defence of such a transaction or its beneficiary on the basis of documents which were neither produced nor proved, would amount to building a castle in the air. Such exercise would be all the more unwarranted when the beneficiary himself did not stir even a straw to prove his claim. His failure to examine the attorney the attesting witnesses of the power of attorney, the executant of the sale

deeds and their attesting witnesses would rather give rise to a presumption under Article 129(g) of Qanun-e-Shahadal Order, 1984, that the evidence which could be but is not produced, would, if produced, be unfavourable to the person withholding it. He in the circumstances cannot be termed a bona fide purchaser either so as to entitle him to protection under section 41 of the Transfer of Property Act.

9. The learned Senior Advocate Supreme Court for the appellant when found no place to stand on, he in his last ditch effort tried to capitalize on the statement of the respondent admitting that he came to know about the sale in 1974. But when there is absolutely no document worth the name on the record showing any sale taking place in or before 1974, this admission being against the record cannot be of any help to the appellant.

10. Granted, that law of limitation ensures order in the society but it cannot be used as a bulwark to perpetuate a gain having its origin in fraud which not only vitiates the most solemn transaction but the very fabric of the society. Entry of order invariably necessitates the ouster of fraud. Shielding a transaction based on fraud and forgery would be more chaotic and disorderly than undoing it. It is essentially in this context that this Court in the cases of "Abdul Majeed and 6 others v. Muhammad Subhan and 2 others", "Muhammad Akbar Shah v. Muhammad Yusuf Shah and others", "Mst. Hameeda Begum v. Mst. Murad Begum" and "Abdul Rehman and others v. Ghulam Muhammad through L.Rs and others" (supra) held that limitation cannot shield a transaction having no effect and existence on account of fraud and forgery. The respondent thus cannot be non-suited on account of his failure to institute a suit for declaration or for cancellation of documents within the time provided by the statute. I, therefore, don't think a case for interference with the impugned judgment is made out.

11. For the reasons discussed above, this appeal being without merit is dismissed.

MWA/M-9/SC Appeal dismissed.

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