

Smt. Arifa & Ors.

v.

**Abhiman Apartment Cooperative Housing Society
Ltd. & Ors.**

(Special Leave Petition (C) 18180 of 2025)

14 July 2025

[K. Vinod Chandran and N.V. Anjaria, JJ.]

Issue for Consideration

Issue arose whether the liberty granted to file a fresh suit by the High Court would enable the party to revive a cause of action and save limitation, so as to enable raking up all grounds earlier raised and rejected by concurrent findings of the trial court and the first appellate court, affirmed by the High Court in Second Appeal.

Headnotes[†]

Code of Civil Procedure, 1908 – s.11, Or.23 r.1 – Limitation Act, 1963 – s.14 – Revival of cause of action – *Res judicata* – Limitation – Non-joinder of necessary parties – Plaintiff, entered into an agreement to sell the property to first defendant – Execution of Power of Attorney-PoA in favour of second defendant, secretary of the first defendant – PoA cancelled before the execution of the sale deed in favour of the first defendant – Plaintiff filed suit for permanent injunction from alienating or disposing off the plot against second defendant – Suit dismissed by the trial court and first appellate court – High Court allowed the second appeal– Appeal before this Court, wherein matter remanded to the High Court – On remand, the High Court agreed with the concurrent findings, dismissed the Second Appeal and granted liberty to file a comprehensive suit for the reliefs sought – Plaintiff then filed a fresh suit for declaration of two sale deeds – Trial Court decreed the suit – In appeal, the High Court set aside the decree and suit was dismissed on the grounds of *res judicata*, limitation and non-joinder of necessary parties – Interference with:

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Held: Not called for – Liberty granted by the High Court in the second appeal was waste of time and effort; which cannot give a fresh lease of life to either the cause of action; to save limitation or the grounds on which the declaration and consequential relief has been prayed for in the present suit; which grounds were already adjudicated in the earlier suit and found against the plaintiff by three courts – Entire sub-stratum of the plaintiff's case is built upon the alleged coercion and misrepresentation in execution of the PoA and subsequent cancellation effected, which ground does not survive having been rejected concurrently by three courts in the earlier proceeding, clearly barring the present suit on the ground of *resjudicata* – Issue now agitated was substantially in issue in the earlier suit and decided against the plaintiff, bringing in the rigor of s.11 – Findings in the impugned judgment regarding limitation and *resjudicata* agreed with – High Court's observation that the suit is barred for reason of non-joinder of necessary parties, is agreed with. [Paras 9-11]

List of Acts

Code of Civil Procedure, 1908; Limitation Act, 1963.

List of Keywords

Liberty to file fresh suit; Revive cause of action; Limitation; *Resjudicata*; Non-joinder of necessary parties; Cause of action; Cancellation of power of attorney; Execution of the sale deed; Suit for permanent injunction; Second appeal; Coercion and misrepresentation.

Case Arising From

CIVIL APPELLATE JURISDICTION: Special Leave Petition (C) No. 18180 of 2025

From the Judgment and Order dated 13.12.2023 of the High Court of Karnataka Circuit Bench at Dharwad in RFA No. 719 of 2015

Appearances for Parties

Advs. for the Petitioners:

Raghavendra Srivatsa, Sr. Adv., Prashant Gouder, D.L. Chidananda.

Advs. for the Respondents:

Sharanagouda Patil, Ms. Supreeta Sharanagouda.

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Judgment / Order of the Supreme Court

Order

1. The question arising in the above case is as to whether the liberty granted to file a fresh suit by the High Court would enable the party to revive a cause of action and save limitation, so as to enable raking up all grounds earlier raised and rejected by concurrent findings of the trial court and the first appellate court, affirmed by the High Court in Second Appeal.
2. We heard Mr. Raghavendra Srivatsa, Senior Advocate appearing for the petitioners and Mr. Sharanagouda Patil, Advocate appearing for respondent No.1.
3. The original plaintiff, the predecessor-in-interest of the petitioners herein admittedly entered into an agreement for sale of the suit scheduled property to the first defendant, a Cooperative Society. It is also admitted that a Power of Attorney (PoA) was executed in favour of the second defendant, the Secretary of the first defendant. It is alleged that the PoA was executed on coercion and misrepresentation, which also stood cancelled before the execution of the sale deed in favour of the first defendant by the second defendant, by virtue of the PoA. Admittedly, the plaintiff first filed a suit for permanent injunction against the second defendant, impleaded in his capacity as the Secretary of the Society, for a permanent injunction from alienating or disposing off the plots comprised in the suit scheduled property and from making any constructions thereon. The said suit was dismissed by the trial court confirmed by the First Appellate Court against which the plaintiff approached the High Court in the second appeal. The second appeal stood allowed upon which the Society filed an SLP before this Court in which leave was granted and the Civil Appeal was allowed as per Annexure P/9, remanding the matter to the High Court by Annexure P/10.
4. The High Court on remand, dismissed the second appeal finding no substantial question of law and also rejected an amendment application to incorporate additional reliefs of declaration of title and recovery of possession, which applications were filed in the second appeal. The High Court having agreed with the concurrent findings, while dismissing the Second Appeal granted liberty to file a

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comprehensive suit for the reliefs sought for, including the proposed amendment.

5. Relying on the liberty granted, the plaintiff filed a fresh suit for declaration of two sale deeds executed by second defendant in favour of the first defendant as void *ab initio* and declaration of the further sale of plots comprised in the scheduled land by the first defendant in favour of the defendant nos. 2-120 as illegal and invalid. The plaintiff also sought possession of the property from defendant nos. 1-120 and a permanent injunction restraining them from interfering with the actual physical and peaceful possession of the scheduled property by the plaintiff. The said suit was decreed by the trial court and in first appeal the judgment and decree were set aside, and the suit was dismissed on the grounds of *resjudicata*, limitation and non-joinder of necessary parties.
6. On the ground of *resjudicata*, we cannot but notice that the High Court in the earlier round in Annexure P/10 judgment found that the plaintiff had executed two sale agreements in favour of the first defendant and had put the first defendant in possession of the scheduled land, the conveyance having been effected subsequently by the Secretary of the Society to the Society on the strength of a PoA. The High Court approved the concurrent finding that the notice of cancellation of the PoA was never served on the Secretary of the Society. The acknowledgement produced to prove its service was not with respect to the notice of cancellation, since it was four months later to the date in the notice of cancellation. It was also found by all the three courts that sale deeds were executed in favour of the allottees of the Society in whose possession the plots were, who had constructed residential buildings in the said lands: not impleaded in the suit seeking permanent injunction. The additional relief prayed through an amendment for declaration of title and recovery of possession was hence rightly rejected by the High Court. The second appeal was dismissed finding no substantial question of law and by a laconic observation, liberty as stated above was reserved.
7. In the impugned judgment reversing the judgment and decree of the trial court, the High Court has categorically found that the suit was barred by limitation. The specific averment regarding the cause of action, as stated in the plaint was extracted, which was the date on which the High Court had dismissed the second appeal

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and reserved such liberty. The limitation would commence from the date of execution of the agreements, the first two of which were in the year 1998. Though the two sale deeds in favour of the Society were thus executed, when the first suit was pending, the plaintiff did nothing to challenge the said conveyance. In the earlier suit the defendant in the written statement had specifically pleaded about the conveyances and the plaintiff admitted his knowledge of all the conveyances while verifying the 'record of rights'. No cause of action can be claimed on the liberty reserved, which is only on just exceptions including limitation, which in any event has to go by the period prescribed in the statute of limitation. The High Court has further found that there can also be no resort to Section 14 of the Limitation Act, since the suit already laid was not before a wrong forum but was not properly framed. Even when a suit is withdrawn with leave of the Court to file a fresh suit, under Order 23 Rule 1 of the CPC limitation applies with full force as per Rule 2 of Order 23.

8. The presently filed suit had sought for declaration as null and void, the conveyances in favour of the first respondent Society and the subsequent conveyances made to defendant nos. 2-120 as also recovery of possession from the defendants and permanent injunction as against the defendants from interference in the enjoyment of the property.
9. The entire sub-stratum of the plaintiff's case is built upon the alleged coercion and misrepresentation in execution of the PoA and subsequent cancellation effected, which ground does not survive having been rejected concurrently by three courts in the earlier proceeding, clearly barring the present suit on the ground of *resjudicata*. The issue now agitated was substantially in issue in the earlier suit and decided against the plaintiff, bringing in the rigor of Section 11 of the Civil Procedure Code.
10. We perfectly agree with the findings in the impugned judgment regarding limitation and *resjudicata* and cannot but observe that the liberty granted by the High Court in the second appeal was akin to flogging a dead horse; which cannot give a fresh lease of life to either the cause of action; to save limitation or the grounds on which the declaration and consequential relief has been prayed for in the present suit; which grounds were already adjudicated in the earlier suit and found against the plaintiff by three Courts.

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11. We also notice that the High Court has further observed that the suit is barred for reason of non-joinder of necessary parties, namely the Belgaum Urban Development Authority and the Badminton Association who were conceded certain extents of property for forming a lay out and civic amenities; with roads to be maintained by the former, and the establishment and management of a Badminton Hall by the latter, which we agree with.
12. We find absolutely no reason to interfere with the well-considered judgment of the High Court which we affirm while rejecting the Special Leave Petition.
13. Pending application(s), if any, shall stand disposed of.

Result of the case: Special leave petition dismissed.

[†]Headnotes prepared by: Nidhi Jain