BHARAT KARSONDAS THAKKAR

v.

M/S KIRAN CONSTRUCTION CO. & ORS.

(Civil Appeal No. 2573 of 2008)

APRIL 9, 2008

(A.K. MATHUR AND ALTAMAS KABIR, JJ.)

Specific Relief Act, 1963:

ss. 15 and 19 – Suit for specific performance of agreement – Amendment of plaint seeking declaration that consent decree passed in another suit involving same property be declared null and void and not binding – Impleadment of party to the said suit, who was not party to instant agreement, also sought – HELD: High Court erred in allowing amendment since it completely changed the nature and character of suit from being a suit for specific performance to one for declaration of title and possession – Besides the party sought to be impleaded is a third party and does not fall within category of "parties to the agreement" – Order of High Court set aside – Applicant would be at liberty to file a separate suit challenging the consent decree invoking relevant provisions of Limitation Act in the circumstances.

One 'SRV' was granted the suit lands on a lease of 999 years by the State Government. On his death, his legal representatives (the lessees) entered into an agreement on 1.10.1973 to sell their rights and interest in the suit land to a party who ultimately brought the benefits of the agreement to a partnership formed by him along with others. On 12.6.1979 the State Government executed a lease in favour of the lessees for a total term of 60 years. On 18.6.1979 the lessees entered into another agreement with a developer company granting them development right over the suit properties stating therein the fact of the lessees having entered into the earlier agreement dated

A 1.10.1973. The Developers entered into a further agreement with a Construction Company namely respondent no. 1, to transfer their beneficial interests in the suit land. On 18.2.1980 the appellant and another partner having beneficial interests under the agreement
B dated 1.10.1973 filed Suit no. 252 of 1980 in the High Court against other partners. In the said suit a Court Receiver was appointed and put into possession of the suit lands.

On 15.5.1981, the lessees terminated the agreement dated 18.6.1979 with the Developers. This led to filing of
C Suit no. 1578 of 1981 instituted by respondent no. 1-Construction Company against the lessees and the Developers for specific performance of the agreements dated 18.6.1979 and 24.8.1979. Meanwhile, the parties in Suit no. 252 of 1982 entered into a settlement. A consent
D decree was passed. Pursuant thereto the Court Receiver took out a Notice of Motion in Suit No. 1578 of 1981 filed by respondent no. 1 praying that order of injunction made on 1.7.1982 be vacated. Respondent no. 1 took out Chamber Summons in his Suit no. 1578 of 1981 seeking
E to amend the plaint by joining respondent nos. 13 to 19 as defendants and also to seek a declaration that the consent decree passed in Suit no. 252 of 1980 was illegal, null and void and liable to be set aside. The Single Judge dismissed the Chamber Summons mainly on the ground
F of limitation holding that the relief claimed by way of amendment of the plaint for setting aside the consent decree had its origin in the agreement dated 1.10.1973 and the same was not challenged by respondent no. 1 earlier despite having knowledge thereof. However, the Division
G Bench of the High Court allowed amendment of the plaint.

In the instant appeal, the question for consideration before the Court was: whether the Division Bench of the High Court had exercised its jurisdiction correctly by allowing the amendment to implead the appellant as a
H party to the suit for specific performance filed by

respondent no.1 and also by allowing the amendment to the pleadings and the prayer to declare the decree passed in Suit No. 252 of 1980 as illegal, null and void and liable to be set aside.

Allowing the appeal, the Court

HELD: 1.1 The Division Bench of the High Court erred in law in allowing the amendment of the plaint sought for by plaintiff-respondent no.1. Even if the bar of limitation is not taken into account, it is to be considered whether the amendment of the pleadings could have at all been allowed by the High Court since it completely changed the nature and character of the suit from being a suit for specific performance of an agreement to one for declaration of title and possession followed by a prayer for specific performance of an agreement of sale entered into between its assignees and the vendors of the assignees. Further, Clause (a) of Section 15 of the Specific Relief Act, 1963 entitles any party to the contract to seek specific performance of such contract. Admittedly, the appellant is a third party to the agreement and does not, therefore, fall within the category of "parties to the agreement". The appellant also does not come within the ambit of Section 19 of the said Act, which provides for relief against parties and persons claiming under them by subsequent title. [para 21] [70-F, G; 71-A, B, C, D]

Kasturi vs. *Iyyamperumal and others* (2005) 6 SCC 733; *Sampath Kumar vs. Ayyakannu and Anr.* 2002 (7) SCC 559 – relied on.

1.2 In the instant case, although, the fact regarding the earlier agreement dated 1.10.1973 was brought to the notice of the advocates for respondent no.1 on 27th March, 1984, no steps were taken by the said respondent to amend the plaint at that stage. Instead, he waited till a consent decree was passed before applying for amendment of the plaint. The proper course of action for

A **respondent no.1 would have been to challenge the consent decree not in its suit for specific performance, but in a separate suit for declaration that the consent decree ought not to have been passed and the same was not binding on the respondent. By seeking amendment**
B **of the plaint in its suit for specific performance, respondent no.1 has substantially changed the nature and character of the original suit, which is not permissible in law. Respondent no.1 was thus proceeding before a wrong forum to establish its stand that the decree obtained by**
C **the appellant was a nullity and was not binding on it. In that view of the matter, although, the order of the Division Bench of the High Court impugned in the instant appeal is set aside, respondent no.1 may, if so advised, file a separate suit to challenge the consent decree invoking**
D **relevant provisions of the Limitation Act in view of the fact that it had been pursuing its claim before the wrong forum. [para 22, 24-25] [71-F, G, H; 72-A; 73-A, B]**

Anil Kumar Singh vs. Shivnath Mishra **1995 3 SCC 147 – relied on.**

E *Durga Prasad vs. Deep Chand* **AIR 1954 SC 75 – held inapplicable.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2573 of 2008.

F From the final Judgment and Order dated 16.11.2006 of the High Court of Judicature at Bombay in Appeal No. 745 of 2001 in Chamber Summons No. 1203 of 2000 in Suit No. 1578 of 1981

G F. De'Vitre, N. Janardanan, Mahesh Agarwal, Rishi Agrawala, Gaurav Goel, Amit Sharma, Ashutosh Garg and E.C. Agrawala for the Appellant.

Buddy A. Ranganadhan, Dimple Shah, Shiv Kumar Suri, Rajesh Kumar and S.S. Khanduja for the Respondents.

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The Judgment of the Court was delivered by A

ALTAMAS KABIR, J. 1. Leave granted.

2. On 27.5.1949 one Sowar Ramji Vaity was given a grant by the Collector of Thane, which entitled him to lease of the lands in Serial Nos.83-91 in village Mulund for a term of 999 years. B Sowar Ramji Vaity died in 1965 leaving behind him four legal representatives, namely, Jagannath, Babu, Vishnu and Bhaskar. On 1.10.1973 the Vaitys entered into an Agreement with one K.L. Danani to sell their rights and interests in the said land for a total consideration of Rs.2 lakhs. In between April and June C 1974, Mr. K.L. Danani constituted a partnership firm with one Mr. K.B. Thakkar and S.S. Thakkar under the name of M/s Swas Construction Company. B.K. Thakkar, the appellant herein, who was then a minor, was also admitted to the benefits of the partnership firm. As his contribution towards the partnership firm D K.L. Danani brought the benefits of the said Agreement dated 1.10.1973 to the partnership firm. In 1976, with the enactment of the Urban Land (Ceiling and Regulation) Act, 1976, K.L. Danani claiming to be in possession of the lands in question under the Agreement dated 1.10.1973 filed a statement as required under Section 6(1) of the aforesaid Act. On 12.6.1979 E the Government of Maharashtra executed a lease in favour of the Vaitys for a total term of 60 years.

3. Soon, thereafter, on 18.6.1979 the Vaitys entered into another Agreement with M/s Modern Development Corporation F granting them development rights over the same properties. Clause 14 of the Agreement mentioned the fact that the Vaitys had entered into an Agreement to sell the said lands to M/s Thakkar and Associates. M/s Modern Development Corporation, in their turn entered into an Agreement with Kiran G Construction Company, the respondent No.1 herein, to transfer its beneficial interest in the suit land, except for Sl.No.91, in favour of the said respondent No.1. Clause 12 of the said Agreement required Modern Development Corporation to obtain confirmation from M/s Thakkar and Associates that there was H

A no subsisting Agreement for sale in their favour in respect of the property agreed to be sold.

4. On 18.2.1980 the present appellant Bharat K. Das Thakkar and K.B. Thakkar filed Suit No.252 of 1980 in the Bombay High Court against K.L. Danani and S.S. Thakkar
B seeking a declaration that a partnership had subsisted between them and that K.L. Danani and S.S. Thakkar have retired from Swas Construction Company, and, in the alternative, for an order of dissolution of partnership, accounts, costs and other reliefs. On Notice of Motion No.283 of 1980 filed by the appellant and
C K.B.Thakkar in Suit No.252 of 1980, K.L. Danani gave an undertaking not to part with the possession of the suit land pending disposal of the Notice of Motion. The said Notice of Motion No.283 of 1980 was finally disposed of on 9.10.1980 and a Court Receiver was appointed by the Bombay High Court
D and put into possession of the suit lands.

5. On 15.5.1981 the Vaitys terminated the Agreement dated 18.6.1979 with M/s Modern Development Corporation Limited. Such termination was followed by Suit No.1578 of 1981 instituted by the respondent No.1 on 7.9.1981 against the Vaitys
E and the partners of M/s Modern Development Corporation Limited for specific performance of the Agreements allegedly executed on 18.6.1979 and 24.8.1979. On 14.9.1981 the Bombay High Court restrained the Vaitys and the partners of M/s Modern Development Corporation Limited from selling,
F transferring or further parting with possession of the suit lands. Notice of Motion No.1271 of 1981 on which the above restraint order was passed was heard on 1.7.1982 and the Vaitys were restrained during the pendency of the Suit No. 1578 of 1981 from selling, transferring, encumbering the suit property forming
G the subject matter of the Agreement dated 18.6.1979 entered into by the Vaitys with M/s. Modern Development Corporation Limited.

6. During pendency of the said suit for specific performance filed by respondent No.1, all the parties to Suit
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No.252 of 1980 arrived at a comprehensive settlement which was reduced into consent terms which were filed in the said suit pending before the Bombay High Court. By its order dated 6.5.1998 the Bombay High Court passed a decree in Suit No.252 of 1980 on the basis of the consent terms filed by the parties to the suit. By virtue of the said decree, the Vaitys, inter alia, admitted that an Agreement had been executed on 1.10.1973 in favour of K.L. Danani and that M/s Swas Construction Company was placed in possession of the suit lands on 3.8.1975.

7. Under the consent decree the Court Receiver was entrusted to discharge certain functions which had been agreed upon and recorded in the consent decree. Pursuant thereto in January 1999 the Court Receiver took out a Notice of Motion No.140 of 1999 in Suit No.1578 of 1981 filed by the Respondent No.1 praying that the order of injunction made on 1.7.1982 be vacated. On 25.8.1999 the Vaitys also took out Notice of Motion No.2700 of 1999 in the aforesaid suit for the same relief. During the pendency of the suit the respondent No.1 took out Chamber Summons No.1203 of 2000 in his suit seeking to amend the plaint by joining the respondent No.13 to 19 as defendants and to also challenge the consent decree passed by the Bombay High Court in Suit No.252 of 1980 on 6.5.1998. The High Court dismissed the Chamber Summons No.1203 of 2003 filed by the respondent No.1 in his suit and also vacated the injunction granted on 1.7.1982. As a consequence the other two notices of Motion for vacating the order of injunction dated 1.7.1982 were allowed. Aggrieved by the said order of the learned Single Judge dated 21.6.2001, the respondent No.1 filed Appeal No. 745 of 2001 before the Division Bench of the High Court. On 16.11.2006 the High Court allowed the aforesaid appeal, thereby allowing the amendment of the plaint and directed that the amendment to the plaint be effected accordingly.

8. It is the said order of the Division Bench which is the subject matter of challenge in the present appeal and raises the question as to whether in a suit for specific performance of

A an agreement for sale of immovable property instituted by the beneficiary of the agreement against the vendor, a stranger or a third party to the agreement who had acquired an interest in the same property is either a necessary or a proper party to the suit. In other words, could the appellant herein, who had acquired
B an independent right in the suit property by way of a separate decree but was not a party to the agreement between the respondent No.1 and M/s Modern Development Corporation, be added as a party in the suit for specific performance filed by respondent No.1 and whether the decree passed in his favour
C could be assailed by the respondent No.1 in his suit for specific performance.

9. Although, we have set out the facts which are relevant for an understanding of the circumstances in which the order impugned in this appeal came to be passed, the scope of the
D appeal is confined to the question whether the Division Bench of the High Court had exercised its jurisdiction correctly by allowing the amendment to implead the appellant as a party to the suit for specific performance filed by respondent No.1 and also by allowing the amendment to the pleadings and the prayer
E in the plaint to include the following prayers:

> "a(i) that this Hon'ble Court be pleased to declare that the decree passed on 6th May 1998 in Suit No.252 of 1980 in so far as it relates to the Suit Property more particularly described in Exhibit 'A' hereto is illegal, null and void and
F is liable to be quashed and set aside;
>
> a(ii) that it may be declared that the decree dated 6th May 1998 passed in Suit No.252 of 1980 in so far as it relates to the Suit Property more particularly described in Exhibit
G A hereto is not binding upon the Plaintiffs herein;
>
> a(iii) that the Court Receiver, High Court, Bombay appointed Receiver in the Suit property more particularly described in the Exhibit A hereto be discharged;
>
> b(iii) that the Defendant Nos. 1 to 4(c), and 13 to 18 and
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herein be ordered and decreed to pay to the Plaintiffs as and by way of exemplary/punitive damages the sum of Rs.50 crores together with interest thereon at the rate of 18% per annum from 6th May 1998 till payment or realisation.

d(i) that pending hearing and final disposal of the Suit operation of Order dated 6th May 1998 passed in Suit No.252 of 1980 in so far as it relates to the Suit property more particularly described in Exhibit 'A' hereto be stayed."

10. Appearing in support of the appeal, Mr.F. De'Vitre, Senior Advocate, submitted that the learned Single Judge of the Bombay High Court had dismissed Chamber Summons No.1203 of 2000 filed by the respondent No.1 herein in Suit No.1578 of 1981, mainly on the ground of limitation holding that the relief claimed by way of amendment of the plaint for setting aside the consent decree had its origin in the Agreement dated 1.10.1973 executed by the Vaitys in favour of K.L. Danani and that the same had not been challenged earlier by the respondent No.1 despite having knowledge thereof.

11. Mr. De'Vitre, submitted that apart from the above, the fact relating to the earlier Agreement and the filing of Suit No.252 of 1980 and the appointment of the Court Receiver and his taking possession of the suit properties were intimated to the learned advocate for the Respondent No.1 by the learned advocate for the petitioner and K.B. Thakkar by letter dated 27.3.1984 and at least since that date the respondent No.1 had knowledge of the earlier Agreement and the consent decree, but he did not take any steps to amend the plaint of the suit filed by him on 7.9.1981 for specific performance of the Agreement said to have been executed between the Vaitys and the partners of M/s Modern Development Corporation and between M/s Modern Development Corporation and the respondent No.1. Such amendment was sought to be made only on 5.10.2000 by way of Chamber Summons No.1203 of 2000. Mr. De'Vitre submitted that even if the date of intimation of the filing of Suit

A No. 252 of 1980 on 27.3.1984 is taken to be starting point of limitation, even then the later suit filed by respondent had stood barred by limitation, and it was so held by the learned Single Judge of the Bombay High Court while rejecting the Chamber Summons No.1203 of 2000 filed by the respondent No.1.

B 12. In addition to the above, Mr. De'Vitre submitted that by allowing the amendment sought for by the respondent No.1 of his plaint, the Division Bench of the Bombay High Court had allowed the respondent No.1 to completely change the nature and character of his suit from one for specific performance of C an agreement to one for declaration of title against a third party to the agreement for which specific performance had been claimed. It was submitted that the suit, as amended, was no longer maintainable as one under Section 19 of the Specific Relief Act, 1963.

D 13. In support of his aforesaid submission, Mr. De'Vitre referred to and relied on a decision of a three Judge Bench of this Court in *Kasturi* vs. *Iyyamperumal and others* [(2005) 6 SCC 733] where an identical question arose in almost identical circumstances, as to whether a third party or stranger to the E contract could be added in a suit for specific performance merely in order to find out who is in possession of the contracted property or to avoid multiplicity of suits and such question was answered in the negative.

F 14. Mr. De'Vitre also referred to another decision of this Court in Anil Kumar Singh vs. Shivnath Mishra (1995 3 SCC 147) where also, in an almost identical fact situation, this Court held that having regard to the provisions of Sections 15 and 16 of the Specific Relief Act, 1963, the respondent in the said case G was neither a necessary nor a proper party to adjudicate upon the dispute arising in the suit since he was not a party to the agreement of sale in respect of which specific performance had been prayed.

15. Relying on the said decisions, Mr. De'Vitre urged that H the decision of the Division Bench of the Bombay High Court

impugned in the present appeal was liable to be set aside. A

16. The submissions made on behalf of the appellant was strongly opposed by Mr. Buddy A. Ranganadhan, learned advocate appearing for the respondents. It was submitted by him that no prejudice could be caused to the appellant by the amendment of the pleadings in the respondent's suit since filing B of a separate suit for setting aside the consent decree would only lead to multiplicity of proceedings. In fact, in order to avoid such multiplicity of proceedings, the High Court had very pragmatically allowed the amendments so that the said question could also be decided in the suit filed by the respondent No.1, C inasmuch as, the subject matter of the suit of the respondent No.1 and the consent decree was one and the same. It was urged that having regard to the nature of the claim of the respondent No.1, the High Court had on 1st July, 1982, restrained the Vaitys from selling, tranferring, encumbering, alienating or D further parting with the suit property during the pendency of the suit filed by the respondent No.1.

17. Mr. Ranganadhan submitted that in the interest of justice and for a complete adjudication of the rights of the parties inter-se in respect of the suit property, the amendment of the E plaint allowed by the High Court should not be disturbed and the interim order of injunction passed on 1.7.1982 should be allowed to continue.

18. Mr. Ranganadhan referred to the decision of a Bench F of three Judges of this Court in Durga Prasad vs. Deep Chand (AIR 1954 SC 75) which also involved a suit for specific performance by a prior purchaser against his vendor and a subsequent purchaser who had paid the purchase money to the vendor. In the said context, this Court held that in case the G suit filed by the prior purchaser is decreed, then the form of decree should be such as to direct specific performance of the contract between the vendor and the prior transferee and to direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the prior transferee. H

A It was observed that the only work required to be performed by the subsequent transferee was to pass on his title to the prior transferee. Mr. Ranganadhan submitted that in this case also, all that the appellant was required to do in the present suit was to pass on his title, obtained on the basis of the consent decree, B to the respondent No.1 as plaintiff. Accordingly, in view of the aforesaid decision, it could not be said that the High Court committed any error in allowing the impleadment of the appellant in the suit or in allowing the prayers in the plaint to be amended to include a declaration for declaring the consent decree to be C not binding on the plaintiffs.

19. Reliance was also placed on another decision of this Court in Sampath Kumar vs. Ayyakannu and Anr. (2002 (7) SCC 559) wherein while considering the provisions of Order 6 Rule 17 of the Code of Civil Procedure, hereinafter referred to as the D "Code", this Court observed that amendment of pleadings at a pre-trial stage should be liberally allowed.

20. It was lastly submitted that even on the question of bar of limitation, the Division Bench of the High Court had erred in holding that the suit was not barred particularly when the E amendment, which was necessitated by the consent decree, related back to the agreement dated 1st October, 1973. As a consequence, the limitation would run from the date of the consent decree and not from the date of the agreement dated 1st October, 1973, although, the effect of the decree would relate F back to the agreement of 1st October, 1973.

21. Having carefully considered the submissions made on behalf of the respective parties, and the decisions cited on their behalf, we are of the view that the Division Bench of the High G Court erred in law in allowing the amendment of the plaint sought for by the respondent No.1 herein as the plaintiff in the suit. Even if the bar of limitation is not taken into account, the plaintiff, namely, the respondent No.1 herein, is faced with the ominous question as to whether the amendment of the pleadings could have at all been allowed by the High Court since it completely H

changed the nature and character of the suit from being a suit for specific performance of an agreement to one for declaration of title and possession followed by a prayer for specific performance of an agreement of sale entered into between its assignee and the vendors of the assignees. Along with that is the other question, which very often raises its head in suits for specific performance, that is, whether a stranger to an agreement for sale can be added as a party in a suit for specific performance of an agreement for sale in view of Section 15 of the Specific Relief Act, 1963. The relevant provision of Section 15 with which we are concerned is contained in clause (a) thereof and entitles any party to the contract to seek specific performance of such contract. Admittedly, the appellant herein is a third party to the agreement and does not, therefore, fall within the category of "parties to the agreement". The appellant also does not come within the ambit of Section 19 of the said Act, which provides for relief against parties and persons claiming under them by subsequent title. This aspect of the matter has been dealt with in detail in Kasturi's case (supra). While holding that the scope of a suit for specific performance could not be enlarged to convert the same into a suit for title and possession, Their Lordships observed that a third party or a stranger to the contract could not be added so as to convert a suit of one character into a suit of a different character.

22. In the instant case, the appellant obtained the consent decree on the strength of an agreement said to have been entered into between the Vaitys and K.L. Danani who brought the said agreement to the partnership which was formed by him with two other persons. Although, this fact was brought to the notice of the learned advocates for the respondent No.1 on 27th March, 1984, no steps were taken by the said respondent to amend the plaint at that stage. Instead, the respondent No.1 waited till a consent decree was passed before applying for amendment of the plaint. The proper course of action for the respondent No.1 would have been to challenge the consent decree not in its suit for specific performance, but in a separate

A suit for declaration that the consent decree ought not to have been passed and the same was not binding on the respondent. By seeking amendment of the plaint in its suit for specific performance, the respondent No.1 has created its own difficulties by substantially changing the nature and character of
B the original suit, which is not permissible in law. If, as was held in Durga Prasad's case (supra), the impleadment of the appellant was only for the purpose of joining him in the conveyance if the respondent No.1's suit ultimately succeeded, the ratio of the said decision would possibly have been
C applicable to the facts of this case. Unfortunately, that is not the case here, since the respondent No.1 has by amending the plaint prayed for a declaration that the consent decree obtained by the appellant was not binding on him and also for a declaration that the consent decree was null and void and was liable to be
D quashed.

23. In our view, the decision of this Court in Durga Prasad's case (supra), cannot be brought to the aid of the case made out by respondent No.1. Furthermore, the Division Bench of the High Court also appears to have committed an error in observing
E that the decision in Anil Kumar Singh's case (supra) was not applicable to the facts of this case, despite the fact that on a consideration of the provisions of Order 1 Rule 10 and Order 22 Rule 10 of the Code, this Court held that since the plaintiff in the said matter was merely seeking the specific performance
F of an agreement of sale, any attempt to implead a third party to the contract in the suit would be hit by the provisions of Section 15 (a) of the Specific Relief Act, 1963. In fact, in Anil Kumar Singh's case (supra) in a suit for specific performance, the respondent, who was not a party to the contract but wanted to
G be impleaded as a defendant on the ground that he had acquired subsequent interest as a co-owner by virtue of a decree obtained from the court, was held not entitled to be joined as defendant either under Order 1 Rule 3 or under Order 1 Rule 10(ii) of the Code having regard to the provisions of Sections 15 and 6 of the Specific Relief Act, 1963.
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24. As it appears the respondent No.1, was proceeding before a wrong forum to establish its stand that the decree obtained by the appellant was a nullity and was not binding on it.

25. In that view of the matter, although, we are setting aside the order of the Division Bench of the High Court impugned in this appeal, the respondent No.1 may, if so advised, file a separate suit to challenge the consent decree in view of the fact that he had been pursuing his claim before the wrong forum.

26. We, therefore, allow the appeal and set aside the impugned order of the Division Bench of the High Court in Appeal No. 745 of 2001 in Chamber Summons No. 1203 of 2000 in Suit No. 1578 of 1981, pending in the Bombay High Court. The respondent No.1 may file a separate suit to challenge the consent decree obtained by the appellant on 6th May, 1998 in Suit No. 252 of 1980 filed by the appellant herein and one K.B. Thakkar against K.L. Danani and S.S. Thakkar and invoke the relevant provisions of the Limitation Act, 1963, for the period during which he was pursuing his relief against the consent decree in his suit and the appeals arising therefrom.

27. There will be no order as to costs.

R.P. Appeal allowed.