



2026 INSC 1020

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____ OF 2026

(ARISING OUT OF SLP (C) NO. 34086 OF 2025)

JOHN MATHEW

.....APPELLANT

VERSUS

SANTHA PAUL & ORS.

.....RESPONDENTS

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Date: 2026.10.21
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Reason:

ARUN PALLI, J.

1. Leave granted.
2. This Civil Appeal arises from the final judgment and decree dated **24.09.2025** rendered by the High Court of Kerala whereby it allowed the Appeal preferred by the heirs of the Plaintiff (**T. Oommen Panicker**) and held the suit to be within limitation. Consequently, the judgment of the Appellate Court (**29.01.2024**) as also the order of the Trial Court (**03.11.2018**) were set aside. And, the matter was remitted to the Trial Court for decision on merits.
3. Parties to the *lis*, hereinafter would be referred to by their original position in the suit.
4. The Plaintiff in a suit filed by him on **10.06.2013**, prayed for the following reliefs:

“(a) To adjudge the conveyance by Sale Deed No. 1663/2005 dated 25.5.2005 of Addl. Sub Registry, Kottarakara as void;
(b) To have the plaintiffs tile [sic.] to plaint scheduled property declared and possession of the same, excluding the area covered by revenue sale delivered up and restored to him with mesne profits and full cost incurred for institution and conduct of this suit;
(c) To allow such other reliefs which are just and necessary in the interest of justice.”

In brief, the case set out by him was that he had executed a General Power of Attorney (‘GPA’) on **21.05.2005**, in favour of Mr. Biju John (‘**Defendant No. 1**’),

entrusting him to manage the agricultural land (**'suit property'**) and effecting improvements thereto. Further, that the GPA authorized Defendant No. 1 to execute as his agent, a sale deed, gift deed, or other specified documents which the Plaintiff was obliged to execute in respect of the suit property. That, however, it did not authorize him to settle the terms for sale, or to create a charge upon the property and execute conveyance. It was submitted that four years thereafter, upon failure of Defendant No. 1 to account for the management of the property despite Plaintiff's demand, the Plaintiff vide registered notice to Defendant No.1, revoked the GPA on **20.07.2009**. Replying to that, Defendant No. 1 stated that the suit property had already been conveyed under the Sale Deed dated **25.05.2005** (**'Sale Deed'**) to Mr. John Mathew (**'Defendant No. 2'**).

It was pleaded that the said alienation was *de hors* the authority conferred by the GPA, for it was effected in the absence of any obligation of the Plaintiff, without his consent and without payment of any consideration to him. That, the conveyance was thus fraudulent, in excess of the authority conferred by the GPA, and thereby rendered the Sale Deed *void ab initio*. Further, that in consequence, Defendant No. 2 acquired no title to the suit property. Lastly, in paragraph 16 of the plaint it was stated that the cause of action arose on 21.05.2005, when the GPA was executed and subsequently on **22.05.2009**, when the Plaintiff came to know of the unauthorized conveyance.

In the Written Statement filed by Defendant No.1 he denied the allegations of fraud and the Sale Deed being void, and stated that the property was validly transferred with Plaintiff's full consent and knowledge for a duly paid consideration of Rs. 4,00,000. Moreover, that for the long-standing cordial relationship with the Plaintiff, no formality as to rendering a receipt etc. was considered necessary by the Plaintiff himself. That pursuant to terms of the GPA, he was clearly authorized to settle the terms for sale and the consequent sale thereof. Lastly, that the suit was barred by limitation as the Plaintiff was aware of the Sale Deed, as early as the date of its execution, i.e., **25.05.2005**.

In a separate Written Statement filed by Defendant No. 2, while reiterating the aforesaid defence, contended that the suit was hopelessly barred by limitation and denied the allegations of fraud and the assertion that the Sale Deed was void. Further, that by virtue of the Sale Deed, the title and possession vested in him absolutely, disentitling the Plaintiff from any of the reliefs prayed for in the suit.

Upon completion of pleadings, the Trial Court vide its Order dated **08.07.2015**, framed the issues, with one of the issues being whether the suit was barred by limitation. The suit accordingly proceeded to the stage of evidence.

However, Defendant No. 2, on **17.09.2018** moved an application (I.A. No. 2647/2018) wherein he prayed that the issue as to the suit being barred by time be tried as a preliminary issue. And, the Trial Court while considering the said

application, observed that the suit was filed to declare the Sale Deed as void and the Plaintiff had admittedly acquired knowledge of the Sale Deed on **22.05.2009**, whereas the suit was filed on **10.06.2013**. And, as per Article 59 of the Limitation Act, the limitation period for cancelling an instrument, starting from the date when the facts entitling the cancellation of the instrument first become known to the Plaintiff, is three—years. Accordingly, the Trial Court vide order dated **03.11.2018** dismissed the suit as being barred by limitation.

On Plaintiff's appeal against the said order, the Appellate Court in A.S. No. 23 of 2020 on **29.01.2024**, although affirmed the order as “**perfectly legal**”, modified it as one of rejection of plaint under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 (**‘Code’**) upon noting the absence of a decree drawn by the Trial Court.

Aggrieved, the LRs of the Plaintiff preferred a Regular Second Appeal. In essence, the case set out before the High Court was that the issue as regards limitation involved disputed questions of facts and law requiring a full trial, and, therefore, could not have been tried as a preliminary issue. Further, with reference to the specific recitals set out in the GPA as also the averments made in the plaint: that although the GPA was duly executed, the authority was confined only to situations where the Plaintiff was obliged to execute and Defendant No. 1 was not authorized to “**settle terms for sale**” thereby the said conveyance being a fraudulent act, which if allowed to be proven, would render the sale deed *void ab initio*. This

therefore would entitle the Plaintiff to ignore the Sale Deed and seek recovery of possession alone. And, per Article 65 the limitation period for recovery of possession of immovable property, starting from the date on which the Defendant's possession becomes adverse is twelve years. Therefore, the courts below erred in terminating the suit on limitation without permitting evidence to be adduced on the alleged absence of authority under the GPA.

Whereas, the Defendants' case was that the Trial Court rightly dismissed the suit under Order XIV Rule 2(2)(b) of the Code, for it being apparently barred by limitation. The suit was termed to be one essentially seeking cancellation of the Sale Deed, and therefore, was governed by the three-year limitation period under Article 59. Lastly, the plea that the Sale Deed was *void ab initio* was termed to be unsustainable, for the GPA clearly authorized Defendant No. 1 to effect the concerned conveyance.

IMPUGNED ORDER

5. The High Court upon consideration of the matter was of the view that the Appeal involved the following substantial questions of law to be determined:

“(i) Whether the findings that the suit is barred by limitation is legally sustainable?”

(ii) Whether merely because one of the reliefs sought is for declaration the outer limit of 12 years to recover possession is lost?”

(iii) Whether the Courts below were justified in determining the question of limitation under Order XIV Rule 2(2) as a preliminary issue?”

And, upon due analysis of the matter, it concluded that the Trial Court had erred in deciding the question of limitation as a preliminary issue. It observed that the question of limitation involved mixed questions of fact and law, and therefore without first determining whether the Sale Deed was void for want of authority under the GPA, the said question could not be conclusively decided.

Whereafter, it proceeded to observe that since the Plaintiff's case was that the Sale Deed was fraudulent and thereby void, therefore, Article 59 was inapplicable, and the transaction was instead governed by Article 65. Resultantly, it answered the substantial questions of law in favour of the Plaintiffs and held the suit to be within limitation. However, since the Trial Court had not rendered a decision *qua* remaining issues, the matter was remitted for fresh consideration as under:

“14..... Since the trial court has not gone into the merits of the case, it is only appropriate that, the suit be restored back to the files of the Munsiff Court, Kottarakara for fresh consideration by enabling the parties to adduce further evidence, if so advised.”

6. Thus, the Appeal.

SUBMISSIONS ON BEHALF OF THE APPELLANT

7. Mr. V. Chitambaresh, learned Senior Counsel for the Appellant (Defendant No. 2), asserted that the execution of the GPA dated **21.05.2005** by the Plaintiff in favour of Defendant No. 1 was not in dispute. He then drew our attention to the specific recital set out in the GPA, *“to execute and sign for and on behalf of me*

the sale agreements, sale deed, gift deed.....” to submit that Defendant No. 1 had complete authority to execute the concerned conveyance. Hence, the allegation of Sale Deed being void was said to be wholly untenable. In such a scenario the primary relief was argued to be that of cancellation of Sale Deed, and recovery of possession was hence, only a consequent relief, thereby making Article 59 of the Limitation Act applicable, and not Article 65.

8. Further, that per paragraph 16 of the plaint, the Plaintiff acquired knowledge of the Sale Deed on **22.05.2009**, yet the suit was instituted more than three years later on **10.06.2013**. Thus, in light of the three–year limitation period under Article 59, the suit was submitted to be barred by limitation. In support of his submissions he placed reliance upon the decisions of this Court in *Rajpal Singh v. Saroj*, (2022) 15 SCC 260 and *Rajeev Gupta and Ors. v. Prashant Garg and Ors.*, 2025 SCC OnLine SC 889.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

9. *Per contra*, Mr. V. Giri, learned Senior Counsel appearing for the Respondents (LRs of the Plaintiff) vehemently disputed the extent of authority conferred upon Defendant No. 1 pursuant to the GPA. In this regard, our attention was drawn to the relevant averments in the plaint wherein it was asserted that though the GPA authorised him to manage the suit property, the authority conferred to effect its sale was confined only to situations wherein the Plaintiff was obliged to execute such a conveyance. Further, that it was specifically pleaded that the suit property

was sold without the Plaintiff's consent and that no consideration was duly paid to the Plaintiff. Attention was then drawn towards the averment wherein the authority of Defendant No. 1 to settle the terms of sale of the suit property was specifically denied and that as a consequence, the Sale Deed was alleged to be void.

10. That although a declaration of Sale Deed being void was sought, the plaint does not proceed on the basis that a valid and operative document required cancellation. It was therefore submitted that the applicability of Article 59 or Article 65 would squarely depend upon whether the Sale Deed was ultimately found to be void or voidable. To that end, the characterization of the suit as one for "**cancellation**" of Sale Deed was submitted to be incorrect. And, thereby, the Plaintiff was entitled to ignore the Sale Deed making the prayer for recovery of possession the primary relief, attracting the twelve-year limitation period under Article 65.

11. Lastly, it was argued that where the suit seeks both a declaration and recovery of possession, the mere inclusion of a declaratory relief does not by itself, exclude the applicability of Article 65. That therefore, the suit cannot be held to be barred by limitation. In support of his submissions, he placed reliance upon *Sopanrao & Anr. v. Syed Mehmood & Ors. (2019) 7 SCC 76*.

ANALYSIS

12. The present appeal, though arising out of a dispute concerning limitation in a suit for declaration, recovery of possession, and consequential reliefs, raises questions

of recurring procedural importance concerning the scheme of Order XIV Rule 2 of the Code. The provision has generated some uncertainty as to the circumstances in which an issue may be taken up for determination before the remaining issues; the distinction between the **framing**, **trial**, and **determination** of an issue; the effect of all issues having already been framed; and, conversely, the stage at which the power to direct that one issue be ‘**tried first**’ ceases to remain available.

13. These questions require Order XIV Rule 2 to be read harmoniously with Order XX Rule 5 and the appellate provisions contained in Order XLI Rules 24 and 25. The occasion further requires us to examine the Full Bench decision of the Himachal Pradesh High Court in *Prithvi Raj Jhingta v. Gopal Singh*, 2006 SCC OnLine HP 25; AIR 2007 HP 11, and to clarify the ambit of the observations of this Court in *Sathyanath v Sarojamani*, (2022) 7 SCC 644. Since the aforesaid questions bear directly upon the proper conduct of civil trials, we consider it appropriate to examine the statutory scheme in some detail before adverting to the facts of the present case.

Legislative history and the scheme of Order XIV Rule 2

14. The present form of Order XIV Rule 2 is the product of a significant legislative change caused by the Code of Civil Procedure (Amendment) Act, 1976. Prior to the amendment, the Rule provided:

“Where the issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first and for that

purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined.”

Under the earlier provision, therefore, once the Court formed the opinion that the suit, or a part thereof, could be disposed of upon issues of law, the obligation was that it ‘**shall try those issues first**’. The experience of the working of the provision disclosed a recurring difficulty. Where the suit was disposed of upon a preliminary issue, but the finding on that issue was reversed in appeal, the litigation per force would travel back to the Trial Court, for decision on merits.

15. The Law Commission in its 54th Report on The Code of Civil Procedure, 1908 adverted specifically to that consequence in recommending the amendment. Its reasoning is crucial, for it also indicates the limits of the reform:

“Where a case can be disposed of on a preliminary point (issue) of law, often the Courts do not inquire into the merits, with the result that when, on an appeal against the finding on the preliminary issue the decision of the Court on that issue is reversed, the case has to be remanded to the Court of first instance for trial on the other issues. This causes delay. It is considered that this delay should be eliminated, by providing that a Court must give judgment on all issues, excepting, of course, where the Court finds that it has no jurisdiction or where the suit is barred by any law for the time being in force.”

Similarly, even the Statement of Objects and Reasons proceeded on the same premise:

“Clause 67-sub-clause (ii).— Rule 2 is being substituted to provide

that although a suit can be disposed of on a preliminary issue, the Court shall ordinarily pronounce judgment on all issues; but where any issue relating to the jurisdiction of the Court or a bar created by any law for the time being in force, the Court may postpone settlement of the other issues until the preliminary issue with regard to the jurisdiction of the Court or such bar has been determined and the Court may deal with the suit in accordance with the determination of such preliminary issue.”

16.Parliament thus altered the ordinary rule without eliminating the power of preliminary adjudication altogether. The pre-amendment preference for determining legal issues first was replaced by a general requirement that all issues should be adjudicated, while an exception was deliberately retained for two classes of legal issues: those concerning the jurisdiction of the Court, and those concerning a bar to the suit created by law. At the same time, the earlier command ‘**shall try those issues first**’ gave way to the discretionary expression ‘**may try that issue first**’. The concern underlying the amendment was, therefore, avoidance of unnecessary piecemeal trials and remands; the legislative choice was to address that concern by narrowing, and making discretionary (rather than abolishing) the power of prior determination.

17.Order XIV Rule 2, in its present form, accordingly reads:

“2. Court to pronounce judgment on all issues. —

(1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

*(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of **law only**, it may try that issue first if that issue relates to— (a) the jurisdiction of the Court, or*

(b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.”

The architecture of the provision is material. Sub-rule (1) states the general rule, but makes it expressly ‘**subject to**’ sub-rule (2). Sub-rule (2), in turn, imposes **three cumulative requirements**. The proposed issue must be an ‘**issue of law only**’; it must relate either to jurisdiction or to a statutory bar; and the Court must form the opinion that the case, or a part thereof, may be disposed of upon that issue. Even where these conditions exist, the expression ‘**may try that issue first**’ makes the exercise discretionary.

What constitutes an ‘issue of law only’

18. The expression ‘**issue of law only**’ has received consistent consideration from this Court. In *Ramesh B. Desai v. Bipin Vadilal Mehta*, (2006) 5 SCC 638, this Court reiterated the principle enunciated in *Major S.S. Khanna v. Brig. F.J. Dillon*, AIR 1964 SC 497:

“13. The jurisdiction to try issues of law apart from the issues of fact may be exercised only where in the opinion of the court the whole suit may be disposed of on the issues of law alone, but the Code confers no jurisdiction upon the court to try a suit on mixed issues of

law and fact as preliminary issues. Normally all the issues in a suit should be tried by the court: not to do so, especially when the decision on issues even of law depend upon the decision of issues of fact, would result in a lopsided trial of the suit.”

The Court further held that, notwithstanding the amendment of 1976:

“...there can be no departure from the principle that the Code confers no jurisdiction upon the court to try a suit on mixed issues of law and fact as a preliminary issue and where the decision on issue of law depends upon decision of fact, it cannot be tried as a preliminary issue.”

19. The principle was reiterated by the three-Judge Bench in *Nusli Neville Wadia v. Ivory Properties*, (2020) 6 SCC 557. The Court emphasised that the device of a preliminary issue cannot itself become a separate evidentiary trial:

“56. Two full-fledged trials by leading evidence are not contemplated in CPC, one of the preliminary issue and another on other issues. Until and unless the question is pure of the law, it cannot be decided as a preliminary issue. In our opinion, a mixed question of law and fact cannot be decided as a preliminary issue, either under Section 9A or under Order 14 Rule 2 CPC.”

The Court therein had also explained the position with reference to limitation and jurisdiction:

“52. In a case question of limitation can be decided based on admitted facts, it can be decided as a preliminary issue under Order XIV Rule 2(2)(b). Once facts are disputed about limitation, the determination of the question of limitation also cannot be made under

Order XIV Rule 2(2) as a preliminary issue... In a case, the question of jurisdiction also depends upon the proof of facts which are disputed. It cannot be decided as a preliminary issue if the facts are disputed and the question of law is dependent upon the outcome of the investigation of facts, such question of law cannot be decided as a preliminary issue, is settled proposition of law either before the amendment of CPC and post amendment in the year 1976.”

The enquiry is consequently not governed by the label ordinarily attached to the subject matter. Limitation may, in one case, be a pure question of law, and, in another, a mixed question; the same may be true of an objection concerning jurisdiction. What matters is whether adjudication of disputed facts is necessary before the legal issue can be answered.

20. *Sukhbiri Devi v. Union of India, 2022 SCC OnLine SC 1322*, illustrates the distinction. This Court held:

“19...Though, limitation is a mixed question of law and facts it will shed the said character and would get confined to one of question of law when the foundational fact(s), determining the starting point of limitation is vividly and specifically made in the plaint averments. In such a circumstance, if the Court concerned is of the opinion that limitation could be framed as a preliminary point and it warrants postponement of settlement of other issues till determination of that issue, it may frame the same as a preliminary issue and may deal with the suit only in accordance with the decision on that issue. It cannot be said that such an approach is impermissible in law and in fact, it is perfectly permissible under Order XIV, Rule 2(2)(b), CPC...”

The importance of *Sukhbiri Devi* lies also in the fact that the proposition was actually applied. The suit there had been dismissed in accordance with the determination of the preliminary issue of limitation, and this Court expressly sustained that course:

“27....In this case based on the determination on the preliminary issue of limitation and in accordance with the decision on that preliminary issue the suit was dismissed. As held by the three-judge Bench in the decision in Nusli Neville Wadia’s case (supra) the provisions under Order XIV Rule 2(1) and Rule 2(2)(b) permit to deal with and dispose of a suit in accordance with the decision on the preliminary issue.”

It follows thus that the command in sub-rule (1) cannot be read as an absolute obligation to try and determine issues which validly remain untried because the suit has already been disposed of under sub-rule (2).

Framing an issue and trying an issue

21. A pertinently related question concerns the procedural stage at which the power under sub-rule (2) may be exercised. The language of the provision itself supplies the starting point. The operative power is that the Court ‘**may try that issue first**’. The Rule thereafter provides that, ‘**for that purpose**’, the Court ‘**may, if it thinks fit, postpone the settlement of the other issues**’. The decision whether a qualifying issue should be tried first, and the decision whether settlement of the remaining issues should itself be postponed, are thus separately expressed. More importantly, the latter is explicitly optional. The statute does not state that the

remaining issues must remain unsettled or unframed before the first power can be exercised.

22. The distinction is consistent with the wider scheme of the Code. Order XIV deals with ‘**Settlement of Issues**’, and Rule 1 contemplates the Court ascertaining the material propositions in controversy, and framing and recording the issues upon which the right decision of the case appears to depend. Order XIV Rule 5 recognises that issues may subsequently be amended, or additional issues framed, before decree. Order XLI Rule 25 is also instructive in its use of distinct expressions: it applies where the court of first instance has omitted ‘**to frame or try any issue, or to determine any question of fact**’ essential to the right decision of the suit. The Code thus does not employ ‘**frame**’, ‘**try**’, and ‘**determine**’ as synonyms. They describe related, but distinct steps in the process of adjudication.

23. The recent decision in *Manjula v. D.A. Srinivas*, 2026 INSC 465, is especially instructive. While explaining the respective fields of Order VII Rule 11 and Order XIV Rule 2, this Court stated:

“10.1....Therefore, an application for rejection of the plaint can be filed at any stage of the suit and once the same is filed, it has to be taken up first before proceeding with the suit, presupposing the legal position that the grounds raised therein are to be treated as preliminary objections....

10.2....On the other hand, a preliminary objection as to the jurisdiction of the trial Court or the maintainability of the suit on the

ground that it is barred by law can be raised in the written statement. The trial Court may then take up the issues relating to jurisdiction or statutory bar as preliminary issues under Order XIV Rule 2, leaving the remaining issues framed under Order XIV Rule 1 to be decided at a later stage, if necessary. The object behind the provision is to ensure that judicial time is not wasted and that the suit is disposed of at the earliest possible stage... Rule 2 of Order XIV, which enables the Court to decide a question of law on undisputed facts, is an exception to Rule 1... Therefore, where a pure question of law can be decided without entering into disputed facts requiring evidence, the Court may decide the same at the earliest stage.”

The Court thereafter explained:

“10.5....Order XIV Rule 2, on the other hand, comes into operation after pleadings are complete and issues arise for adjudication... Under Order XIV Rule 2, however, the Court may examine whether a pure question of law arises on admitted facts so as to obviate a full-fledged trial. Thus, while the former tests the sustainability of the plaint on its face, the latter concerns the mode of adjudication after issues are framed.”

24. The precise question that whether all issues having already been framed, by itself, exhausts the discretion under Rule 2(2) did not arise for decision in *Manjula*. Its exposition is nevertheless significant. The Court expressly contemplated ‘**the remaining issues framed under Order XIV Rule 1**’ being left to be decided later, if necessary. That proposition accords with the statutory text. The expression ‘**may**,

if it thinks fit, postpone the settlement of the other issues’ would be deprived of much of its content if postponement of settlement were, in every case, an indispensable condition for trying the qualifying issue first. An expressly optional consequence cannot therefore be converted into a condition precedent to the existence of the power.

Order XX Rule 5 and the sequence of trial

25. Order XX Rule 5 reinforces this construction. It provides:

“In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefor, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit.”

The concluding words are important. Order XIV Rule 2(1) embodies the ordinary rule of decision upon all issues; Order XIV Rule 2(2) permits one qualifying issue to be tried first; and Order XX Rule 5 recognises that a finding upon one or more issues may, in an appropriate case, suffice for the decision of the suit. *Ex facie*, these provisions are precise, unambiguous, and capable of harmonious operation. Where a qualifying issue is validly isolated for prior trial, and disposes of the suit, the remaining framed issues may never require trial. Where the Court has already **embarked upon the trial** of the issues generally, however, the case has travelled into the ordinary course contemplated by sub-rule (1), and the possibility of subsequently severing one issue as though it were yet to be ‘**tried first**’ no longer exists.

26. This distinction was usefully expressed by the High Court of Judicature at Hyderabad in *Nuthalapati Munaswamy Naidu v. N.A. Chengama Naidu*, 2018 SCC OnLine Hyd 170: (2018) 4 ALT 500. Reading Order XIV Rule 2 with Order XX Rule 5, it observed:

“14...[O]nce the trial is taken up and not confined to that issue letting evidence, but allowed the evidence to be let in on all issues the Court has to decide by giving finding on all issues... Thus, if at all the Court wants to deal with the preliminary issue out of other issues formulated, it has to decide that issue if at all by confining the trial only to that issue without undertaking the trial on the other issues, otherwise... the Court shall take up trial on all issues and give its findings on all issues as also mandated by Order XX Rule 5 C.P.C.”

The significance of the formulation lies in its recognition that other issues may already have been formulated. What matters is whether the Court has confined the trial to the qualifying issue, or has embarked upon trial of the issues generally.

27. The statutory scheme may consequently operate in, at least, four procedural settings. The Court may, **first**, frame only the qualifying issue of law, postpone settlement of the remaining issues, and try that issue first. **Secondly**, it may frame all the issues, but direct, contemporaneously, that a qualifying preliminary issue be tried first, leaving the other framed issues untried. **Thirdly**, it may have framed all issues and placed the suit on the ordinary course for evidence, but, before the Court has actually embarked upon trial and evidentiary adjudication of the issues generally, a party may invoke Rule 2(2); if no such request had previously been

made or adjudicated, the mere fixation of a date for evidence does not, by itself, amount to an irrevocable judicial election against exercise of the power. **Fourthly**, the Court may already have embarked upon trial of the issues generally. At that stage, the power under Rule 2(2) is no longer capable of being exercised.

28. The reason for the last proposition is inherent in the language of the provision itself. What the Court is empowered to do is to ‘**try that issue first**’, not merely to decide, or pronounce judgment upon, that issue first. ‘**First**’ is relational: it describes the position of the trial of the selected issue in relation to the trial of the others. Once the issues have entered a common trial, that relation can no longer be brought about. It is no longer possible, either temporally or conceptually, for one of them thereafter to be *tried first*. A Court may, of course consider, or decide, one issue before another while composing its judgment, but that is not the power conferred by sub-rule (2). The provision authorises a prospective ordering of trial; it does not authorise a retrospective reordering of a trial already underway. The relevant dividing line is, therefore, not whether all issues have been framed, but whether trial of the issues generally has been undertaken. ***Framing all issues does not exhaust the discretion under Order XIV Rule 2(2); embarking upon their trial does.***

The scope of Prithvi Raj Jhingta v Gopal Singh

29. The Full Bench decision of the Himachal Pradesh High Court in *Prithvi Raj*, must be understood against this distinction. The reference before the Full Bench arose

in a case where all issues had not merely been framed, but had been ‘**tried together**’, and the parties had adduced evidence upon them. The question referred therein, itself proceeded on the basis that ‘**all the Issues have also been tried together**’, and that the parties had adduced their evidence upon them. The narrow question was, therefore, whether, after the issues had already undergone trial, the Court could thereafter take up the issues of law alone and pronounce judgment upon them. To the extent the Full Bench answered that question in the negative, there can be no disagreement. Once the issues have entered trial together, one of them cannot subsequently be characterised as an issue yet to be ‘**tried first**’.

30. The Full Bench, however, stated the scheme of Rule 2 more broadly. It proceeded on the basis that Rule 2 contemplated two sets of situations, the first being one in which, at the stage of framing issues, the Court ‘**frames, in the first instance issues of law only**’ and postpones settlement of the other issues, and the second being one in which all issues, both of law and fact, are framed together, and proceeds to decide them together. And concluded:

“4...More importantly, and for the purposes of our case, in the light, of the specific reference on the formulated question of law, Rule 2 as it presently stands caters to and creates two sets of situations in a suit. One situation is where, at the stage of framing of issues the court exercises its discretion conferred upon it under subrule (2) and frames, in the first instance issues of law only and passes an order specifically and explicitly proposing to try issues of law only, in the process postponing the settlement of other issues until after it has decided the issue of law only. In this situation, at the stage of

determining or deciding the issues of law only the Court may either dispose of the suit based on such determination of the issues of law only, of course these issues of law relating to the jurisdiction of the Court or a bar to the maintenance of the suit created by law for the time being in force, or upon determination of issues of law only the Court may hold that the suit is maintainable and/or that it has jurisdiction also to try the suit and thus, consequently to proceed to settle other issues for trial and determination. Such a situation is contemplated by sub-rule (2) and there is no manner of doubt that in taking recourse to such a situation the Court has the mandate as well as the sanction from the legislature.

5. The second, other situation which may arise is that the Court does not exercise its discretion, for any reason whatsoever, valid or otherwise, and at the stage of framing of the issues frames all the issues, of law as well as fact and proceeds to decide all such issues together. This course of action is contemplated by an explicit mandate of the Legislature in sub-rule (1)...”

.....

9....except in situations perceived or warranted under sub-rule (2) where a Court in fact frames only issues of law in the first instance and postpones settlement of other issues, under sub-rule (1), clearly and explicitly in situations where the Court has framed all issues together, both of law as well as facts and has also tried all these issues together, it is not open to the Court in such a situation to adopt the principle of severability and proceed to decide issues of law first...”

The two propositions discussed by the High Court must be separated. The latter proposition, concerning a case where all issues have both been framed and tried

together, correctly identifies a stage at which Rule 2(2) can no longer be invoked to reorder the sequence. The former proposition, suggesting that Rule 2(2) operates only where the Court initially frames the legal issue alone and leaves the remaining issues unsettled, goes beyond both the facts of the reference and the language of the Rule.

31. The reason is, quite simply, textual. Rule 2(2) does not provide that the Court *shall* postpone settlement of the remaining issues. It provides, after conferring the power to ‘**try that issue first**’, that the Court ‘**may, if it thinks fit**’, postpone their settlement. The broader formulation in *Prithvi Raj*, reverses this statutory syntax by converting an expressly optional procedural course into a condition precedent for exercise of the power. It also misses to account for two intermediate situations already noticed: the Court may frame all issues, yet direct that one qualifying issue be tried first; or, before trial on the issues generally has commenced, it may subsequently exercise Rule 2(2), although all the issues were framed earlier. This Court, in *Manjula*, by expressly referring to ‘**the remaining issues framed under Order XIV Rule 1**’, makes the former possibility particularly clear.

32. Further, the legislative history relied upon in *Prithvi Raj* does not require a different conclusion either. Avoidance of remands explains why Parliament altered the ordinary rule in 1976; it cannot erase the very exception which Parliament simultaneously retained. The Law Commission itself expressly preserved cases where the Court lacked jurisdiction, or the suit was barred by law.

The possibility of remand may, therefore, inform the exercise of the discretion conferred by the word ‘**may**’; it cannot supply an additional statutory condition that the other issues must remain unframed. We accordingly approve *Prithvi Raj* insofar as it holds that, once the issues have been taken up for trial together, the Court cannot thereafter sever one of them for prior adjudication. We are unable, however, to approve its wider proposition that Rule 2(2) is available only where the qualifying issue alone was framed at the outset and settlement of all other issues was postponed.

Clarification of Sathyanath v Sarojamani

33. This brings us to *Sathyanath*. The High Court in that case had directed the Trial Court to frame and determine the plea of res judicata as a preliminary issue. This Court disapproved that direction. Paragraph 33 is material:

“We find that the order of the High Court to direct the learned trial court to frame preliminary issue on the issue of res judicata is not desirable to ensure speedy disposal of the lis between parties. Order XIV Rule 2 of the Code had salutary object in mind that mandates the Court to pronounce judgments on all issues subject to the provisions of sub-Rule (2). However, in case where the issues of both law and fact arise in the same suit and the Court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that suit first, if it relates to jurisdiction of the Court or a bar to the suit created by any law for the time being in force. It is only in those circumstances that the findings on other issues can be deferred. It is not disputed that res judicata is a mixed question of law and fact depending upon the pleadings of the parties, the parties to the suit etc. It is not a plea in law alone or which bars the jurisdiction of the Court

or is a statutory bar under clause (b) of sub-Rule (2).”

The foundation of the decision is evident. The *res judicata* issue before the Court required examination of factual material, and did not satisfy the conditions of Rule 2(2). Indeed, the judgment expressly recognised the converse: where sub-rule (2) applies, **‘the findings on other issues can be deferred’**.

34. This Court thereafter referred to Order XLI Rules 24 and 25, and observed that evidence recorded upon all issues enables the appellate court to determine questions of fact without remand. It emphasised, with reference to Order XIV Rule 2 and Order XX Rule 5, the desirability of findings upon all issues so as to obviate a remand. Those observations must be read in the context in which they were made. For the issue as to the suit being barred by the principle of *res judicata* did not qualify under sub-rule (2), the case remained governed by the ordinary rule in sub-rule (1). They cannot be read as an absolute command that issues which have validly been left untried under sub-rule (2) must nevertheless be tried and decided.

35. Such a reading would conflict with the statutory words themselves. Sub-rule (1) is expressly **‘subject to’** sub-rule (2); sub-rule (2) authorises the Court to **‘deal with the suit in accordance with the decision on that issue’**; Order XX Rule 5 recognises that a finding upon one or more issues may be sufficient for the decision of the suit; and *Sukhbiri Devi* actually sustained disposal upon the qualifying preliminary issue. *Sathyanath*, therefore, reaffirms the general rule where the exception is unavailable. It does not extinguish the exception. Similarly, although

Sathyanath referred to *Prithvi Raj* in detail, the question whether mere prior framing of the remaining issues disables Rule 2(2) did not arise for decision there. Its reference to the Full Bench decision cannot be understood as adopting every wider proposition contained in that judgment.

36. The position may, therefore, be stated in this manner. An issue may be tried first under Order XIV Rule 2(2) only if it is an issue of law relating to jurisdiction or a statutory bar, and is capable of disposing of the case, or a part thereof, without adjudication of disputed facts. The Court's power to '**try that issue first**' is distinct from its further discretion to postpone settlement of the remaining issues. The latter is optional, and all issues may, therefore, already stand framed without the power under sub-rule (2) necessarily having been exhausted. The power may be exercised when only the qualifying issue has been framed; when all issues have been framed, but the qualifying issue is designated for prior trial; and, where the question had not previously been considered, even after all issues have been framed and the suit has been listed for evidence, provided the court has not yet embarked upon the trial of the issues generally. Once it has done so, the statutory occasion to direct that one issue be '**tried first**' has passed. Where a qualifying issue was validly tried first, and disposes of the suit, the remaining issues need not be tried merely because they had already been framed.

APPLICATION TO THE PRESENT CASE

37. For, the procedural history assumes decisive significance at this juncture, we may

now apply the principles stated above to the facts of the present case. All the issues in O.S. No. 337 of 2013 had been framed as early as 08.07.2015, with the plea of limitation specifically forming Issue No. 5.

“1. Whether the prayer to set aside and declare void the Sale Deed No. 1663/2005 of Adl. Sub Registry Kottarakkara is allowable?

2. Whether the prayer for declaration of Plaintiff’s right and possession of the plaint schedule property is overall allowable?

3. Whether the prayer for consequential delivery of the possession with mesne profits is allowable?

4. What is the order as to costs?

Addl. Issues Framed:

5. Whether the suit is barred by limitation?”

The suit thereafter proceeded to trial on the issues so framed. The Plaintiff led, and concluded, his entire evidence. The Defendants then entered upon their evidence, and evidence-in-chief had already been adduced on their behalf. It was at that stage, in 2018, that I.A. No. 2647 of 2018 was filed seeking determination of the issue as regards suit being barred by time as a preliminary issue.

38. Notably, this was not a case where all the issues had merely been framed, and the Court was thereafter, before commencement of their trial, invited to determine the order in which they ought to be tried. This was not a case either where the suit had only been fixed for evidence, and an application under Rule 2(2) was made before evidence upon the issues generally had commenced. The trial had already progressed substantially. The Plaintiff had concluded his evidence, and the Defendants had entered upon theirs. Issue No. 5 was, by then, one among the

issues already undergoing trial. Thus, the present case falls squarely within the fourth of the situations adverted to earlier. Hence, the statutory occasion to direct that it be ‘**tried first**’ had passed.

39. There is a severe conceptual difficulty in treating Rule 2(2) as available at that stage which is independent of considerations of convenience, prejudice, or procedural economy. The statutory power is to ‘**try that issue first**’. It is not a power merely to *decide* one issue first after all the issues have undergone, or are undergoing, a common trial. By the time I.A. No. 2647 of 2018 was filed, the Plaintiff had completed his evidence upon the suit, and the Defendants had entered upon theirs. Issue No. 5 was, therefore, already being tried together with the remaining issues. To direct at that stage that it be ‘**tried first**’ would require the Court to treat as anterior an event which had already occurred concurrently with the trial of the other issues. The statute cannot sensibly bear such a construction. What Rule 2(2) authorises is a prospective ordering of trial; it does not authorise the Court retrospectively to sever from an ongoing composite trial one issue, and deem it to have been tried first. The power had, therefore, exhausted itself before I.A. No. 2647 of 2018 was moved.

40. The fact that I.A. No. 2647 of 2018 invoked Section 151 CPC does not alter the position. The nomenclature assigned to an application cannot determine the source, content, or extent of the Court’s power. In substance, the prayer was that an issue already framed, and already forming part of an ongoing trial, be severed

from the remaining issues and adjudicated in advance. The Code specifically regulates that course through Order XIV Rule 2. The inherent power preserved by Section 151 cannot be invoked to circumvent the conditions, sequence, or temporal limits which attend the exercise of a power expressly conferred by the Code. Once the suit had reached the stage which it had reached here, Section 151 could not resuscitate a power to ‘try’ Issue No. 5 ‘first’ when it was already part of a trial in progress.

41. Lamentably, the Trial Court did not advert to this question at all. Its order proceeded directly from the Plaintiff’s pleaded date of knowledge to Article 59 of the Limitation Act, and concluded:

“5. Heard both sides.

6. As per Article 59 of Limitation Act, the period of limitation to cancel an instrument is 3 years. The period starts from the date when fact become known to him. As per the cause of action in the plaint the date of knowledge of plaintiff regarding the instrument was on 22.05.2009. This suit was filed on 10.06.2013. So the 3 year period will expire on 22.05.2012. This suit is barred by limitation.

Hence the application is allowed. This suit is found not maintainable. Suit is dismissed.”

The order contains no consideration of the fact that the suit had already entered trial on all the framed issues, or of the anterior question whether, at that advanced stage, Order XIV Rule 2(2) permitted Issue No. 5 to be detached from the ongoing trial at all.

42. The First Appellate Court did not rectify that error either. It adverted to the principle that limitation may, in an appropriate case, be determined as a preliminary issue on admitted facts, but did not examine whether the power to direct prior trial remained available after the trial upon the issues generally had already commenced. Indeed, the appellate judgment itself records, as one of the grounds of challenge, that evidence had already been adduced on behalf of the Plaintiff. The Court nevertheless affirmed the determination of limitation, and went further by modifying the Trial Court's disposal into a rejection of the plaint under Order VII Rule 11(d):

“12.....When the plaintiff himself states that he came to know about the fraud on 22/05/2009, the suit filed by him on 10/06/2013 is more than an year after the expiry of period of limitation. It is clearly barred by the law of limitation. Therefore, the trial court order is perfectly legal and it is to be confirmed. How ever, the fact that the trial court did not draft decree is to be taken note of and the trial court order is to be modified as rejection of plaint as per Order VII Rule 11 (d) of the Code of Civil Procedure, 1908. Point No. 1 is found accordingly.

13. Point No. 2:- In the result, the trial court order in IA 2467/2018 [sic.] is confirmed. OS 337/2013 is rejected as per Order VII Rule 11(d) of the Code of Civil Procedure, 1908 as the suit is barred by expiry of period of limitation. Appeal is dismissed with the modification that the plaint is rejected and not dismissed. Parties shall suffer their costs.”

43. The latter course raises a further procedural question which we need not decide:

whether, in an appeal preferred by the Plaintiff himself, the Court could invoke the provision of Order VII Rule 11 of the Code and reject the plaint. The Appellate Court, thus did not merely affirm the Trial Court's holding on limitation, it substituted the entire procedural basis upon which the suit had been brought to an end. The circumstance is sufficiently unusual to be noticed. We leave the question there, since the orders of the courts below are unsustainable on the anterior ground arising under Order XIV Rule 2.

44. The High Court, being cognizant of the question as to whether the courts below could decide the issue as regards the suit being barred by time as a preliminary issue, framed *inter alia* the following substantial question of law:

“(iii) Whether the Courts below were justified in determining the question of limitation under Order XIV Rule 2(2) as a preliminary issue”

However, despite having framed the said question, it did not address the operation of the concerned provision at all. In particular, it did not consider the significance of the stage which the trial had already reached when I.A. No. 2647 of 2018 was moved. By then, the Plaintiff had concluded his evidence, and the Defendants had entered upon theirs. The anterior question, therefore, was whether there remained any statutory occasion to direct that Issue No. 5 be ‘**tried first**’. For the reasons already stated, there did not.

45. Further, the High Court upon consideration of the matter observed that the Trial Court clearly erred in deciding the issue of limitation as a preliminary issue without permitting the Plaintiff to adduce evidence. And, it was/is trite law that the question as regards limitation is not a pure question of law but a mixed question of fact and law:

“7. At the outset itself, this Court finds that the trial court has committed great error in allowing I.A No.2647/2018 and trying the issue as a preliminary issue on the-maintainability without permitting, the plaintiff to adduce evidence....

.....

8. It is trite law that the question of limitation is not a pure question of law, but is a mixed question of fact and law. Therefore, without going into the question as to whether the sale deed was void for want of power under the Power of Attorney executed by the plaintiff, the trial court could not have decided the question of limitation in the suit.”

46. Having said that, it still proceeded to determine the issue as to the suit being barred by time on merits and adverting to the decisions of this Court in *Shanti Devi v. Jagan Devi* 2025 SCC OnLine SC 1961 and *Sopanrao (supra)* as also of the Kerala High Court in *Cherian K.M. v. Ammini* [2025 KHC OnLine 746] and *Mathew v. Ayyappankutty* [1962 KHC 12] the High Court concluded that the Plaintiffs were not required to seek for setting aside a void document as they had claimed recovery of possession and hence it was Article 65 of the Limitation Act that was applicable and therefore the suit was within limitation:

“14....Resultantly, this Court is inclined to answer the substantial questions of law framed in the appeal in favour of the appellants and it is held that the suit is not barred by limitation. The plaintiffs need not seek for setting aside a void document and since they have claimed recovery of possession, the relevant Article applicable is Article 65 of Limitation Act and therefore the suit is within the period of limitation.”

Once it is held that Issue No. 5 could not, at that stage, have been segregated from the ongoing trial for preliminary determination, the proper course was/is to restore that issue to the ordinary trial along with the remaining issues. The applicability of any particular provision of the Limitation Act, the legal character of the impugned transaction, and the ultimate answer to Issue No. 5 must, therefore, remain entirely open. Any observations of the High Court bearing upon those questions cannot govern the further proceedings.

CONCLUSION

47. The present case illustrates the distinction at the heart of Order XIV Rule 2. The framing of all issues does not, by itself, prevent the Court from directing prior trial of a qualifying issue under sub-rule (2). But once the Court has embarked upon the trial of the issues generally, that power can no longer be invoked to reorder a trial already underway. Here, the Plaintiff had completed his evidence, and the Defendants had entered upon theirs. Issue No. 5 was, therefore, not an issue awaiting a decision whether it should be ‘**tried first**’; it was already part of a composite trial in progress. Order XIV Rule 2(2) could not be employed at that stage to convert what was already being tried together into a preliminary

adjudication of one issue alone.

48. Thus, in the wake of the position sketched out above, the only and the inevitable conclusion that we could reach is: that the order passed by the Trial Court, the judgment of the First Appellate Court as also the decision rendered by the High Court are apparently unsustainable. Thus, are accordingly set aside. The IA No. 2647 of 2018 is dismissed. The suit (OS No. 337 of 2013) is restored to the file of the Munsiff Court, Kottarakara. The Trial Court shall accordingly resume the proceedings from the stage immediately before the interruption caused to the ordinary course of trial by I.A. No. 2647 of 2018.

49. The trajectory of the present litigation at all forums is a telling illustration of the very mischief which the procedural law was designed to prevent. A suit instituted in 2013, with all issues having been framed as far back as 2015, is being remitted after over a decade for a decision on merits. Thus, in the given circumstances we request the Trial Court to decide the suit within three months from the receipt of the copy of this judgment.

50. The interim order dated 08.12.2025 directing a stay of the proceedings in OS No. 337 of 2013 at the Munsiff Court, Kottarakara stands vacated. The Civil Appeal is accordingly disposed of in the above terms. No order as to costs.

51.Needless to assert that this judgment shall not constitute an expression of opinion on the merits of the case of either of the parties. The Trial Court shall decide the suit on its own merits and in accordance with law.

..... **J.**

[K.V. VISWANATHAN]

.....**J.**

[ARUN PALLI]

NEW DELHI,

September 21, 2026.