IN THE JUDICATE OF MADRAS HIGH COURT

RESERVED ON : 03.08.2017

DELIVERED ON : 19.09.2017

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THE HON'BLE MR.JUSTICE R.SUBBIAH
and
THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

A.S.No.573 of 2011
and
C.M.P.No.5624 of 2017

Mrs.Jayashree Jayanth ... Appellant/Plaintiff

Vs.

1.Mr.N.Krishnaswamy

Mrs.Premaleela Krishnaswamy (deceased)

2.Mrs.Malika Murali Babu

3.Mr.R.Murali Babu ... Respondents/Defendants 1,3 & 4

Appeal has been filed under Section 96 of CPC, against the judgment and decree dated 01.04.2011 in O.S.No.804 of 2008 passed by the learned Additional District & Sessions Court (FTC-I), Coimbatore.

For Appellants : Mr.P.Wilson, Senior Counsel for Mr.S.Saravanan

For Respondents: Mr.N.Sridhar, for Mr.R.Bharathkumar

JUDGMENT

R.SUBBIAH, J.,

This appeal is filed as against the judgment and decree dated 01.04.2011 in O.S.No.804 of 2008 passed by the learned Additional District & Sessions Judge, (FTC-I), Coimbatore, by which the suit filed by the appellant herein/plaintiff for declaration, injunction and other reliefs, was dismissed_

2.The appellant herein is the plaintiff and the respondents herein are the defendants before the Trial Court. For the sake of convenience hereinafter the parties will be referred to as per their rankings in the suit as plaintiff and the defendants.

3.The brief facts of the case of the plaintiff are as follows_

3-1.The plaintiff is the elder daughter of the 1st defendant. The 2nd defendant is her mother, who had died during the pendency of the trial. The 3rd defendant is the sister of the plaintiff. The 4th defendant is the husband of the 3rd defendant and as such, he is the brother-in-law of the plaintiff.

3-2.The 1st defendant's family has various movable and immovable assets, including the properties in Mettupalayam, Coimbatore and other places, which are being managed by the 1st defendant. The properties were derived from the joint family funds and the plaintiff is also entitled to her share in the joint family properties. The 1st defendant, being the father of the plaintiff, right from the beginning, has been exerting influence over the plaintiff and the actions of the 1st defendant clearly demonstrated that the sole object of the 1st defendant is to dominate and to exercise control over the affairs of the plaintiff. The various actions of the 1st defendant would amply demonstrate his dictatorial, overbearing, perverse and irrational behaviour, which has caused great mental agony and distress to the plaintiff. The 1st defendant has been hostile towards the plaintiff from her early days itself and the same is characterized by acts of physical and mental violence towards the plaintiff. Even before her marriage, the plaintiff was forced to execute a Power of Attorney in favour of the 1st defendant on 17.01.1985. The said Power Attorney authorized the 1st defendant to take complete control over the properties of the plaintiff which he started enjoying right from January, 1985 onwards. At that time, the plaintiff did not suspect the intentions of her father viz., the 1st defendant and she trusted that he would take care of her share in the joint family properties and would act in a manner which would be beneficial and not detrimental to her interest. While so, in the year 1986, the plaintiff got married and shifted her residence from Mettupalayam to USA to join her husband. For about 10 years, the plaintiff stayed in USA and returned to India only in the year 1996.

3-3.It is the further case of the plaintiff that to comply with the Tax laws in USA and to file her tax returns, the plaintiff required information about her affairs in India and to know about her income which was derived from various properties in India. To meet the said legal requirement, the plaintiff made enquiries with the 1st defendant about her income and affairs in India. The plaintiff's auditor also addressed letters dated 23.02.2005 and 02.06.2005 to the 1st defendant requesting for the requisite information. Since the 1st defendant did not furnish the particulars and was being secretive, the plaintiff's auditor advised the plaintiff to revoke the Power of Attorney dated 17.01.1985 executed by her in favour of her father 1st defendant. The Auditor also advised the plaintiff to collect details of her accounts from her father, in response to a notice received by the plaintiff from the Department of Treasury, IRS, USA. But, the 1st defendant was not forthcoming with any information and was very secretive about the financial affairs of the plaintiff. As the plaintiff persisted, the 1st defendant got extremely upset and refused to give any information about her financial affairs and he even went to the extent of denying her access to her own bank accounts and other important information. On the contrary, the 1st defendant questioned the need for submitting the details requested by the plaintiff. The 1st defendant began instructing the plaintiff to sign on blank sheets of papers, on company documents and bank documents for applying for loans. Although reluctant, the plaintiff signed on those documents, but began questioning the 1st defendant seeking explanation for the regular loan applications and regarding the affairs of the family businesses. The 1st defendant was rude and he refused to divulge the information requested by the plaintiff. However, the plaintiff's tax filing requirements in USA continued, which she later complied with the services of her Auditor. In the year 2005, inspite of repeated requests by the plaintiff for the needed details of her financial information, the 1st defendant did not furnish the required details. Hence, left with no alternative, the plaintiff by notice dated 05.09.2005 revoked the Power of Attorney executed by her in favour of the 1st defendant and also issued a Public Notice in the newspaper viz., The Hindu, revoking the Power of Attorney dated 17.01.1985. Even thereafter, there was no progress made and hence, persuasion was made to the plaintiff by her cousin Chandini and her husband Surya Kumar to visit Mettuplayam so as to discuss the differences with her father 1st defendant and resolve the matter. The plaintiff, though apprehensive, visited her parental house at Mettupalayam for about three days. When the plaintiff undertook the said journey to Mettupalayam, she was under the fond hope that her father would see reason and he would be just and fair in his disposition towards her. On the other hand, the plaintiff's visit to Mettupalayam turned out to be a very painful one, wherein the plaintiff was subjected to extensive pressure by the 1st defendant because of his overbearing personality and temperamental behaviour. It created a sense of panic and fear in the mind of the plaintiff. So much so, the plaintiff underwent a lot of mental agony and her stay in Mettupalayam was far from being comfortable.

3-4.It is further stated by the plaintiff that in Metupalayam, she was coerced by the 1st defendant to execute a fresh Power of Attorney to attend to her affairs. The 1st defendant went on repeatedly nagging the plaintiff to execute documents or else refused to look after her interest insofar as joint holdings and properties of the plaintiffs are concerned. The plaintiff thought that it was the desire of the 1st defendant to replace an earlier Power of Attorney with a fresh one, so as to enable the 1st defendant to administer her properties. Therefore, the plaintiff was left with no other alternative but to go to the Sub-Registrar's office and sign the Power of Attorney dated 27.09.2005 prepared at the instance of the 1st defendant. The 1st defendant also took the signatures of the plaintiff in two other sets of affidavits which the plaintiff was not allowed to read. The 1st defendant represented that these affidavits signed before the Notary were to follow up collection of various other incomes in the form of interest etc. The 1st defendant had brought the Notary to his office and the plaintiff was coerced to sign the affidavits. The plaintiff had to act as per the dictates of the 1st defendant, as otherwise, there was physical threat and use of abusive language leading to violent and aggressive conduct by the 1st defendant, which time and again resulted in physical assault. The plaintiff succumbed to the dictates of the 1st defendant since she did not want to undergo further trouble. The plaintiff has been under medications for depression ever since the birth of her child. The 1st defendant took advantage of that and being in a dominating position, obtained her signatures in self-serving documents. The plaintiff did not even read the affidavits. Nor was she given any time to read, after getting the signature of the plaintiff in whatever documents he wanted. After getting the signatures of the plaintiff, the 1st defendant informed the plaintiff that she can get back to Bangalore. The plaintiff also went back to Bangalore without any mental strength. The plaintiff was under tremendous stress and trauma and after a few days, she contacted the 1st defendant and wanted copies of the documents which were obtained from her. The plaintiff was informed that it would take some time for the documents to be obtained from Sub-Registrar Office and she would be given copies later. Nothing turned out during the next couple of months and the plaintiff's apprehension of a stratagem conceived and displayed by the 1st defendant, became established. The plaintiff ultimately visited Mettupalayam during January 2006 to visit Corporation Bank for the purpose of withdrawing funds. At that time, she requested the 1st defendant to handover copies of documents obtained from her. After initial hesitancy, the 1st defendant ultimately parted with xerox copies of documents. The plaintiff went back to Bangalore and while travelling to Bangalore, she glanced through the documents and was totally shocked at the kind of fraudulent device adopted by the 1st defendant. She came to know that the 1st defendant, apart from getting Power of Attorney, had prepared two affidavits, one purporting to be a gift and the other purporting to ratify all acts done by the 1st defendant as a power of attorney holder. The plaintiff went back to Bangalore and caused a legal notice dated 09.01.2006 to be issued through her counsel, revoking the second Power of Attorney dated 27.09.2005 and disputing the two affidavits executed by her.

3-5.It is further case of the plaintiff that on a perusal of the documents obtained by the 1st defendant, it is clear that the 1st defendant had procured a set of stamp papers from the same stamp vendor. A few stamp papers have been used for procuring the Power of Attorney. The plaintiff's signature was obtained in several other blank sheets of stamp papers and other stamp papers have been used for preparing the two affidavits, one purporting to be a gift and the other purporting to ratify all acts done by the 1st defendant as a power of attorney holder. In fact, by virtue of the said documents, the 1st defendant had transferred the shares of the plaintiff in Encee Aromatics (P) Ltd, for which she did not give any consent. In fact, she was completely unaware of the transfer of her shares. The plaintiff never intended to gift any property to her father - 1st defendant. Significantly, there is nothing mentioned in the said affidavits to the effect that the plaintiff exhibited love and affection towards her father. There was no delivery of the movables which are the subject matter of the alleged gift. The documents were always in custody of the 1st defendant and there is no reference to acceptance of the alleged gift or delivery. The alleged gift is thus totally void and nonest. The plaintiff never entertained any intention as a donor to make any gift. The plaintiff is not in agreement with the contents of the aforementioned documents which were got by the 1st defendant by exercising undue influence and under coercion. As the contents of the said documents had far reaching repercussions on the financial status of the plaintiff, the plaintiff issued notice to the Corporation Bank, Indian Bank and the Sub-Registrar at Mettupalayam informing them of the revocation of the Power of Attorney. Simultaneously, the plaintiff has also sent legal notices to the shareholders of all family companies putting them on notice of the aforesaid developments and requesting them not to give effect to any transfer of shares standing in the name of the plaintiff, that may be sought for by the 1st defendant on the strength of the Power of Attorney, which the plaintiff had revoked. Thus, according to the plaintiff, by virtue of Power of Attorney, the 1st defendant had acted in a manner detrimental to the interests of the plaintiff. The 1st defendant had withdrawn money in his capacity as an agent. even after the Power of Attorney was revoked. Hence, the plaintiff has filed the suit for the following reliefs_

a)declaring that the two affidavits dated 28.09.2005 obtained by the 1st defendant from the plaintiff were brought about by undue influence and coercion and are void, illegal and nonest.

b)to order and direct the 1st defendant to deliver possession of the properties in the form of deposits and shares set out in Schedule "A" to the plaint.

c)to order and direct the 1st defendant to retransfer the 50,536 equity shares to the plaintiff as described in Schedule "B" hereunder.

d)to order and direct the 1st defendant to render a true and correct account of appropriation of the plaintiff's funds and money due to the plaintiff during the period he acted as her power agent by use of the power of attorney and to order and direct the 1st defendant to pay the said amount as found due and appropriated by the 1st defendant with interest thereon @ 12% per annum from the date of suit till realization.

e)for permanent injunction to restrain the 1st defendant from encashing any of the deposits or dealing with the assets of the plaintiff set out in Schedule "A" hereunder.

f)to award cost of the suit to the plaintiff."

4-1.The case of the plaintiff was resisted by the 1st defendant, by filing written statement, which was adopted by the defendants 2 to 4. In the written statement, it has been stated by the defendants that the filing of the suit is an abuse of process of court. It is unfortunate that the plaintiff is being used as a pawn by her husband Jayanth Balakrishna and she is made to dance to his tunes. The plaintiff has been ill-advised to file the suit against her own father. It is true that the plaintiff executed a Power of Attorney in favour of the 1st defendant on 17.01.1985 and that the 1st defendant acted as the Power Agent of the plaintiff. But, it is false to state that the said Power of Attorney was executed on account of any force. It is also false to state that the plaintiff is entitled to any share or income as member of the Hindu undivided family. Earlier, the plaintiff herein had filed a suit for partition before the City Civil Court at Bangalore in O.S.No.6285 of 2008 and in the said suit, she has also made incorrect and untrue allegations for the purpose of justifying her claim for partition. In the said suit, she has also unnecessarily and unwantonly dragged the family members of late Sri Chandappa, late Sri Ramu Gowder and Dave Gowder, who are brothers of the 1st defendant herein, knowing fully well that they have nothing to do with the 1st defendant in common and they are all divided. She has filed suits in various forums to harass the 1st defendant, so as to make him run from pillar to post. Further, the plaintiff has also filed a suit in O.S.No.214 of 2008 on the file of the Sub-Court, Poonamallee in respect of a partnership firm by name M/s.Dycasts Services against her own sister Mrs.Mallika and some of the members of the family of Chandappa and Ramu Gowder. There is also an arbitration proceeding in respect of a partnership firm.

4-2.It is further stated by the defendants that the plaintiff was given excellent education by the 1st defendant. She was educated in St.Hildas School at Ooty and later on, she was sent to P.S.G.R. Krishnammal College for her B.Sc., Chemistry. The 1st defendant was also helping the plaintiff in every possible way for her further education at United States also. The marriage of the plaintiff was performed on a grand scale on 29.06.1986 at Coimbatore. At the time of marriage, the plaintiff was given very valuable and substantial jewellery to the tune of 150 sovereigns plus diamond necklace valued Rs.15 lakhs. The plaintiff was given silverwares to the tune of Rs.15 lakhs at that time, apart from other valuable gifts. Those items are now 10 times more valuable.

4-3.It is further stated by the 1st defendant that it is true that the suit shares were purchased in the name of the plaintiff by the 1st defendant and she was also made as a partner in some items of business and also made as a shareholder in a number of companies. All those investments for purchasing of shares and making her partner in partnership firms etc were all borne only by the 1st defendant. The plaintiff had no independent income or funds. She has no shares in any of the joint family properties. The 1st defendant conferred all those benefits on the plaintiff on account of love and affection. The 1st defendant did not at any time act against the interest of the plaintiff. Since the 1st defendant had created lot of interest for the plaintiff by means of shares, interest in partnership firm etc it was necessary for the plaintiff to execute a Power of Attorney, so that the 1st defendant can lookafter her affairs, since the plaintiff got married and shifted to United States from Mettupalayam and joined her husband. It is false to state that the plaintiff was denied access to her own bank accounts. On the other hand, all the required details of the plaintiff were made available to her. It is strange to allege that the plaintiff was advised to revoke the Power of Attorney by her Auditor and she obliged. It is false to state that the 1st defendant was secretive. The paper publication on 09.09.2005 were resorted to by the plaintiff only to tarnish the image of the 1st defendant, knowing well that the 1st defendant was a well known popular figure in the locality.

4-4.According to the defendants, it is false to state that the plaintiff was coerced by the 1st defendant to execute a fresh Power of Attorney. Having taken legal help to cancel the earlier Power of Attorney and following it up with a paper publication and thereby insulting the defendants, it is rather preposterous on the part of the plaintiff to suggest that she was coerced to execute another Power of Attorney and that the 1st defendant was nagging her to execute documents. It is imaginary on the part of the plaintiff to think that the Power of Attorney was taken only from her with some ulterior reasons. It is false to state that the 1st defendant began instructing the plaintiff to sign documents for applying for loan and that the plaintiff put the signatures reluctantly. It is true that the plaintiff gave a paper publication in 'The Hindu' on 09.09.2005 through her advocates and she also issued a registered communication through her counsel.

4-5.It is the case of the defendants that the plaintiff came to Mettupalayam, after causing all mental agony, and then expressed regret for her conduct possibly realizing that if she continued to insult the 1st defendant, she may not be given any further properties/benefits and that she has no inherent right. The 1st defendant also did not take a serious view since he thought that the plaintiff was being used as a pawn by her husband. The plaintiff informed that she will execute another Power of Attorney and requested that the 1st defendant should take up the work as Power Agent as before. The 1st defendant obliged the plaintiff, as a result of which the second Power of Attorney dated 27.09.2005 was executed and registered. At the time of taking the power of Attorney, the 1st defendant asked the plaintiff as to whether she would change her attitude after going back, having made frivolous allegations earlier. The plaintiff assured that she would not do so and she voluntarily executed affidavits on 28.09.2005 before a Notary Public. The said affidavits were prepared as required by her and on her instructions. It is true that the 1st defendant was reluctant to accept the responsibilities as Power Agent and that a rapprochement was reached because of the plaintiff's voluntary approach. The shares referred to in the affidavits were directed to be transferred by her. The shares were transferred in respect of Encee Aromatics (P) Ltd also, as per the steps taken by the plaintiff herself. The other shares were not transferred. This fact will show that the 1st defendant was not too keen or anxious to effect any transfer of shares. On the other hand, the plaintiff stated that she would like to gift the items referred to in the affidavits, taking into consideration the huge benefit derived by her and insisted on the gift which was accepted. She has also admitted in the said affidavits that she used to send letters to banks, post offices and financial institutions and that she is withdrawing her allegations. She has also accepted and declared that whatever deeds and acts done by the 1st defendant pursuant to the Power of Attorney dated 17.01.1985 are binding on her and that she has no right to question the 1st defendant.

4-6.It is the specific case of the defendants that the said two affidavits were not brought about by undue influence and coercion. It is false to state that the two affidavits are void and illegal. Such allegations are belated. The plaintiff is not entitled for retransfer of suit 'B' schedule shares. Similarly, no relief can be claimed in respect of items mentioned in schedule 'A' of the plaint. The plaintiff is also not entitled for any injunction. The 1st defendant has always been transparent in his actions as Power Agent and he has given all the details to the plaintiff. The plaintiff has not made any averments against the gift in the Paper Publication issued by her on 11.01.2006. But, the plaintiff has cancelled the Power of Attorney dated 27.09.2005 by registered Notice dated 09.01.2006. In the said Notice dated 09.01.2006, she has not stated anything in respect of the Power of Attorney having been executed by way of undue influence. In the paper publication issued by her in 'The Hindu' also, there is no allegation that the Power of Attorney was obtained by undue influence and that the two affidavits were obtained in an illegal manner by way of undue influence. The relief of accounting is also not clear. The plaintiff is not entitled to seek any accounts in respect of Power of Attorney dated 17.01.1985. Moreover the power was cancelled on 05.09.2005, but the suit was filed only on 22.10.2008 ie., three years after the date of cancellation. Therefore, the relief of accounting with regard to the Power of Attorney dated 17.09.1985 is barred by limitation. As regards the second Power of Attorney dated 27.09.2005, it was in force only for a short period ie., till the cancellation which was effected in January 2006 and no transaction took place during that period. The plaintiff has given consent letters on 27.09.2005 to the Indian Bank, Mettupalayam Branch and Mahendra Credit Corporation. In the said letters, she has admitted that she had sent letters during the first week of September till such date by herself and through her auditor and advocate and she requested the bank to ignore her earlier letters and also the letters sent by her Chartered Accountants and Advocates. She had declared that whatever acts, deeds etc done by her father in pursuance to the General Power of Attorney dated 17.01.1985 till 10.09.2005 are binding on her. She has also admitted in her said letter to the Bank that she has executed a fresh General Power of Attorney in favour of the 1st defendant on 27.09.2005 to lookafter her assets, movables, immovables, investments etc and she has stated that she will forward a copy of the Power of Attorney as soon as she gets the same from the Sub-Registrar's Office. She has requested that the name of the 1st defendant should be included as Joint account holder in the deposits and that the deposits should be payable to either or survivor. Thus, the defendants stated that the plaintiff is not entitled for any relief as prayed for and they sought for dismissal of the suit.

5.On the above pleading, the Trial Court has framed the following issues_

1)Whether the affidavits executed by the plaintiff are true and enforceable?

2)Whether the plaintiff is entitled for declaration as prayed for?

3)Whether the plaintiff is entitled for the documents as prayed for?

4)Whether the plaintiff is entitled for accounting relief?

5)Whether the plaintiff is entitled for relief of injunction?

6)What other relief the plaintiff is entitled to?

6.Before the Trial Court, in order to prove her case, the plaintiff examined herself as P.W.1, besides examining one B.R.Ravi Shankar Rao as P.W.2 and marked 28 documents as Ex.P.1 to Ex.P.28. On the side of the defendants, the 1st defendant examined himself as D.W.1, besides examining one G.Palanisamy, an employee in the firm of the 1st defendant, as P.W.2, and marked 7 documents as Ex.B.1 to Ex.B.7.

7.The Trial Court, after analysing the entire evidence both oral and documentary, has dismissed the suit on the findings that the affidavits executed by the plaintiff are true documents and the same are enforceable by the 1st defendant and that the plaintiff is not entitled to get back the said documents and as such, the plaintiff is not entitled to the relief of rendition of accounts also. Aggrieved over the same, the present appeal has been filed by the plaintiff.

8.In the present Appeal, the plaintiff has also taken out a petition in C.M.P.No.5624 of 2017, seeking for permission to produce/file the five documents as additional evidence, contending that despite due diligence, she was unable to procure the additional evidence at the time of trial. The documents now sought to be marked are as follows_

Sl.No.	Date	Document
1.	23.09.2010	Record of Doctor's treatment of the appellant/plaintiff recorded at Mallya Hospital, Bangalore from 10.09.1999 to 19.01.2006. Certified record prepared by the hospital on 23.09.2010.
2.	08.12.2008	Order in Writ Petition filed by the appellant/plaintiff vide W.P.No.14308/2008 (GM-RES) in the High Court of Karnataka, seeking direction from the Court to access her SB Account at SBM, M.g.Road Branch, Bangalore. The SB Account is related to an alleged item of gift (Schedule A property), namely partnership shares in DNL Enterprises, Bangalore. Rental proceeds of the appellant/plaintiff were being deposited into the said SB account.
3.	27.03.2008	Judgment in O.S.No.1848/2000 by City Civil Court, Bangalore in respect of potential liability of the appellant/plaintiff in relation to her partnership shares in DNL Enterprises, which are an alleged item of gift.
4.	09.06.2008	Letter received by the appellant/plaintiff from Mahendra Credit Corporation informing her about transfer of appellant's/plaintiff's account on 01.08.2005 by the 1st respondent/1st defendant to his name, when acting as the appellant's/plaintiff's GPA holder and prior to the alleged gifting.
5.	05.11.2007	Corporation Bank account Statement of the appellant/plaintiff showing self-earned USD deposits in her name which is a subject matter of the alleged gift (Schedule A property).

9.The learned senior counsel appearing for the appellant/plaintiff submitted that the 1st defendant is the father of the plaintiff. The 1st defendant's family had various movable and immovable assets and also having family businesses. The plaintiff's father, 1st defendant, was having hostile attitude towards the plaintiff. The plaintiff was forced to execute a Power of Attorney (Ex.A.1) in favour of the 1st defendant on 17.01.1985. The plaintiff's marriage took place in the year 1986 and after the marriage, she left to USA and she stayed in USA till 1996. She came back to India in the year 1996. In the year 2005, to comply with the tax laws in USA and to file tax returns, she required some information about her affairs in India. Hence, the plaintiff's auditor addressed letters on 23.02.2005 & 02.06.2005 (Ex.A.2 & Ex.A.3) to the 1st defendant seeking to provide particulars about her income and affairs in India. The 1st defendant received the letter/Notice dated 02.06.2005 on 06.06.2005. Inspite of receipt of the letter/notice, the 1st defendant did not furnish the details as sought for by the plaintiff. But, on the very next day ie., on 07.06.2005, the 1st defendant presented the share transfer form (Ex.B.3) with recitals containing sale consideration, before the Registrar of Companies, to transfer 50536 shares of Encee Aromatics (P) Ltd, valued to the tune of Rs.5,05,360/- standing in the name of the plaintiff, to the name of the 1st defendant. A perusal of Ex.B.3, Share Transfer Form, would show that the document is dated as 20th June 2005 at Mettupalayam, but it was presented on 7th June 2005 before the Registrar of Companies.

10.Further, the 4th defendant herein, who is the Director of the Company as well as the son-in-law of the 1st defendant, had signed the certified copy of the Board Resolution (Ex.B.4), dated 20.06.2005, resolving to transfer the shares from the name of the Plaintiff to 1st defendant. As per Ex.B.4, the transfer of shares was effected on 20.06.2005. Similarly, Ex.B.3-Share Transfer Form, is dated 20.06.2005. The transfer of shares was effected on 20.06.2005, on which date Ex.B.3, share transfer form was dated. But, the seal in Share Transfer Form-Ex.B.3 would show that the same was presented on 7th June 2005 before the Registrar of Companies. When the transfer of shares was effected on 20.06.2005, the presentation of the Share Transfer Form could be later to the date of effecting the transfer ie., after 20.06.2005. But, in the instant case, Ex.B.3 indicates that the Share Transfer Form was presented to the Registrar of Companies on 07.06.2005, which would clearly show that the said transfer is sham.

11.Moreover, as per Ex.B.3, consideration of Rs.5,05,360/- was paid. But, according to the 1st defendant, transfer of shares was effected as gift and 1st defendant did not pay any consideration for effecting the transfer of shares. In fact, the 1st defendant during the cross-examination has admitted that he was not a witness to the Share Transfer Form-Ex.B.3, but one B.Narayanasamy, who happens to be an employee under the 1st defendant, has signed in Ex.B.3. But, the said B.Narayanasamy was not examined as a witness in this present suit. Nor the 4th defendant, son in-law of the 1st defendant, deposed before the Court, who had signed Ex.B.3 as a Director of the Company, to effect the transfer of shares.

12.It is the further submission of the learned senior counsel for the appellant/plaintiff that the Power of Attorney was executed by the plaintiff on 17.01.1985 appointing the 1st defendant as her agent and the said Power of Attorney (Ex.A.1), was cancelled by the plaintiff on 05.09.2005 by sending legal notice; therefore, by virtue of the said Power of Attorney

(Ex.A.1), a fiduciary relationship existed between the plaintiff and the 1st defendant from 17.01.1985 till 05.09.2005. A fiduciary relationship introduces the maxim of equity that the litigant should come to Court with clean hands and the equitable principles of law such as estoppel, undue influence, unconscionability and active confidence in the fiduciary relationship between an agent and a principal. During the subsistence of this fiduciary relationship, 50536 shares standing in the name of the plaintiff were alleged to have been transferred by way of sale to the name of the 1st defendant (by Ex.B.3). In this regard, the learned senior counsel appearing for the appellant/plaintiff relied upon the judgment of the Hon'ble Supreme Court reported in (2004) 9 SCC 468 (Krishna Mohan Kul @ NaniCharankul and another Vs. PratimaMaity and others), wherein it has been held that a person standing in a fiduciary relation to another has a duty to protect the interest given to his care and the court watches all such transaction between such persons so that protector may not use influence or confidence to his advantage; when the party complaining shows such relation, the law presumes every thing against the transaction.

13.For the same proposition, the learned senior counsel for the appellant/plaintiff has also relied upon another decision reported in (2014) 4 SCC 196 (Pratima Chowdhury Vs. Kalpana Mukherjee and another), wherein it has been held that when the parties are in fiduciary relationship, the manner of examining the validity of a transaction, especially when there is no reciprocal consideration, has to be based on parameters which are different from the ones applicable to an ordinary case.

14.With regard to the execution of second Power of Attorney dated 27.09.2005 and two affidavits dated 28.09.2005 (Ex.A.8 to Ex.A.10), it is submitted by the learned senior counsel appearing for the appellant/plaintiff that after revocation of earlier Power of Attorney dated 17.01.1985 (Ex.A.1) by legal notice dated 05.09.2005 (Ex.A.6), since there was no response from the 1st defendant, on the persuasion of the plaintiff's cousin Chandini and her husband Surya Kumar, the plaintiff visited Mettuplayam so as to discuss the differences with her father 1st defendant and resolve the matter. But, when the plaintiff went to Mettupalayam, she was coerced by the 1st defendant to execute a fresh Power of Attorney (Ex.A.8). The 1st defendant also took signatures of the plaintiff in two affidavits, which the plaintiff was not allowed to read, as well as other blank papers. The plaintiff had to act as per the dictates of the 1st defendant, as otherwise, there was physical threat and use of abusive language leading to violent and aggressive conduct by the 1st defendant. The plaintiff succumbed to the dictates of the 1st defendant, since she did not want to undergo further trouble. Hence, the plaintiff signed the said documents on 28.09.2005 and thereafter, returned back to Bangalore. Again, during January, 2006, for the purpose of withdrawing funds from Corporate Bank, the plaintiff visited Mettupalayam and at that time, she asked the 1st defendant to handover copies of documents obtained from her. After initial hesitancy, the 1st defendant ultimately parted with xerox copies of documents. The plaintiff went back to Bangalore and while travelling to Bangalore, she glanced through the documents and was totally shocked at the kind of fraudulent device adopted by the 1st defendant. She came to know that the the 1st defendant, apart from getting Power of Attorney, had prepared two affidavits, one purporting to be a gift and the other purporting to ratify all acts done by the 1st defendant as a Power of Attorney Holder.

15.The learned senior counsel for the appellant/plaintiff submitted that it is the case of the defendants that by two affidavits dated 28.09.2005 (Ex.A.9 & Ex.A.10), the plaintiff had gifted the movables which form part of plaint 'A' and 'B' schedule properties. But, it is the specific case of the plaintiff that those affidavits were brought about by undue influence, duress and coercion and that the plaintiff never intended to gift any property to her father and the documents were always in the custody of the 1st defendant and there was no delivery of movables, which were the subject matter of gift.

16.Therefore, according to the learned senior counsel for the appellant/plaintiff, the core issue involved in the suit is whether the plaintiff had gifted the movables through Ex.A.9 & Ex.A.10 to the 1st defendant as alleged by the 1st defendant and as to whether the ingredients of a gift as contemplated under Sections 122 & 123 of the Transfer of Property Act were satisfied. The entire suit revolves on this issue. The learned senior counsel for the appellant/plaintiff submitted that Section 122 defines 'gift' and Section 123 states as to how the Transfer is effected. As per Section 122, gift should be made voluntarily without any consideration and should be accepted by the donee. The 1st defendant at para 9 in his written statement has stated that the plaintiff realized that she may not be given any further property/benefit. Therefore, even according to the 1st defendant, the plaintiff executed the gift under threat that she would be deprived of further property/benefit. Therefore, the ingredients of Section 122 are not satisfied so as to make a valid gift. Moreover, as per Section 123, for making a gift of movable property, the transfer may be by a registered instrument signed and attested by two witness or by delivery. In the present case, there was no registered instrument effecting gift. The 1st defendant was holding the documents as agent even prior to the date of alleged gifting. Therefore, there could not have been any delivery of movables effecting transfer as required under Section 123 of the Transfer of Property Act. Therefore, according to the learned senior counsel for the appellant/plaintiff, there was no valid gift in the eye of law. The learned senior counsel for the appellant/plaintiff would further submit that unfortunately the trial Court has not framed any issue as to whether the plaintiff had gifted the movables to the 1st defendant in terms of Sections 122 & 123 of the Transfer of Property and ingredients of the said provisions have been satisfied. In the absence of any such issue having been framed and a decision rendered thereon, the judgment of the trial Court cannot be sustained and it is liable to be set aside.

17.Further, the learned senior counsel for the appellant/plaintiff invited the attention of this Court to Section 16 of the Indian Contract act, which defines the 'undue influence'. Section 16 reads as follows_

> "16. 'Undue influence' defined.—
> (1) A contract is said to be induced by 'undue influence' where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other."
> (2)In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another—
> a)where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or
> (b)where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.
>
> (3)Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall be upon the person in a position to dominate the will of the other."

By relying upon the said provision of law, the learned senior counsel for the appellant/plaintiff submitted that as provided under Section 16(2)(a) & (b) of Indian Contract Act, the 1st defendant herein is deemed to be in a position of dominating the will of the plaintiff when the alleged Share Transfer Form

(Ex.B.3) was signed as well as when the Power of Attorney dated 27.09.2005 (Ex.A.8) and two affidavits dated 28.09.2005 (Ex.A.9 & Ex.A.10) were executed. Therefore, the said documents namely Ex.B.3, Ex.A.8 to Ex.A.10 have been obtained by the 1st defendant from the plaintiff by undue influence, in the light of the provisions of Section 16(1) of the Indian Contract Act. In this regard, the learned senior counsel has also relied upon the decision reported in AIR 1961 Madras 190 [M.A.AbdulMalick Saheb Vs. T.P.Muhammed Yusuf Sahib and others], wherein it has been held that the mere existence of the fiduciary relationship raises the presumption of undue influence and the Court will hold the transaction to be bad unless the presumption of undue influence is rebutted by cogent evidence adduced by the donee. Thus, the learned senior counsel for the appellant/plaintiff submitted that when the fiduciary relationship is admitted between the plaintiff and the 1st defendant at the time of alleged execution of Ex.B.3, Ex.A.8 to Ex.A.10 as well as Ex.B.5 & Ex.B.6, it is presumed that they were executed under undue influence.

18.In this regard, the learned senior counsel for the appellant/plaintiff has also invited the attention of this court to Section 111 of Indian Evidence Act, which reads as follows_

> "111. Proof of good faith in transactions where one party is in relation of active confidence.—Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence."

In the present case, it is an admitted fact that the 1st defendant is the power agent of the plaintiff; therefore, the 1st defendant stands in the position of active confidence. The words 'active confidence' indicate that the relationship between the parties must be such that one is bound to protect the interest of the other. When the 1st defendant stands in the position of active confidence, the burden of proving good faith of the transaction is upon the 1st defendant to show that transaction was in good faith.

19.Moreover,the learned senior counsel for the appellant/plaintiff submitted that according to Section 16(2) of the Indian Contracts Act, when a person stands in a fiduciary relationship to another or makes a contract with a person whose mental capacity is affected by mental distress, a presumption by operation of law is created that the person is in a position to dominate the will of the other. Section 16(3) of the Contract Act provides that when a person is in a position to dominate the will of another enters into a contract with him and the transaction appears on the fact of it to be unnatural or unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the another. In the present case, the 1st defendant was in a position to dominate the will of the plaintiff and therefore, Exhibits A1, A8, A9, A10, B3, B5 & B6, were the outcome of the inducement by undue influence. Under those documents, the plaintiff has been deprived of all her valuable movables and actionable claims including fixed deposits and shares in business concerns, worth more than few crores of rupees, under the guise of gift without any valid reciprocation. It is also unnatural for a daughter to give her entire movables worth few crores as gift especially when she was denied any share in the immovable ancestral properties. Therefore, these transactions on the face of them are unconscionable. Therefore, as per Section 16(3) of the Indian Contracts Act, transactions covered under Exhibits A1, A8, A9, A10, B3, B5 & B6 are unconscionable on the face of them. Therefore, the burden lies on the 1st defendant to show that execution of these documents were not out of undue influence. The 1st defendant has not explained the inconsistencies and suspicious circumstances surrounding the execution of the said documents and has not proved that the aforesaid documents were executed not out of undue influence but out of free will.

20.The learned senior counsel for the appellant/plaintiff would further submit that the plaintiff had sought for rendition of accounts from the 1st defendant. The principal is entitled to get rendition of accounts from the agent. In the present case, even according to the 1st defendant, the plaintiff executed Ex.A.1 & Ex.A.8-Power of Attorney deeds appointing the 1st defendant as her agent. Therefore, the 1st defendant is liable to render the accounts to his principal/plaintiff. But, the trial Court has not rendered any reasons as to how the plaintiff being the principal is not entitled to get rendition of accounts from her agent/1st defendant. Therefore, the plaintiff is entitled for rendition of accounts. But, the trial Court without consideration all these aspects in a proper perspective has dismissed the suit in entirety. Thus, the learned senior counsel for the appellant/plaintiff sought for setting aside the judgment and decree passed by the Trial Court and to allow the appeal.

21.With regard to the reception of additional documents, it is the submission of the learned senior counsel for the appellant that the additional documents could be produced in the appeal stage also to support the evidence that was already produced at the time of trial. Thus, he prays for accepting the additional documents filed in C.M.P.No.5624/2017.

22.Countering the submissions made by the learned senior counsel for the appellant/plaintiff, it is replied by the learned counsel appearing for the respondents/defendants that the plaintiff had projected a case as if it is the sole object of the 1st defendant, who is her father, to dominate and exercise control over the affairs of the plaintiff. It is also the case of the plaintiff that even prior to the marriage, the plaintiff was forced to execute a Power of Attorney (Ex.A.1) on 17.01.1985 in favour of the 1st defendant. It is admitted case of the plaintiff that after her marriage in the year 1986, she went to USA and stayed in USA till 1996 and returned to India only in the year 1996. From 1996 to 2005, the plaintiff has not chosen to say anything upon the Power of Attorney dated 17.01.1985. If really Ex.A.1-Power of Attorney was obtained by the 1st defendant by force from the plaintiff before her marriage, nothing prevented the plaintiff to revoke the said Power of Attorney (Ex.A.1) as soon as she reached USA or thereafter also. Therefore, admittedly, the said Power of Attorney (Ex.A.1) was in force till the plaintiff revoked the same on 05.09.2005 ie., almost twenty years after the execution of the registered Power of Attorney (Ex.A.1).

23.The learned counsel for the respondents/defendants would further submit that on 09.09.2005 the plaintiff issued a public notice in the newspaper 'The Hindu' (Ex.A.7) by and under which she published the revocation of the Power of Attorney (Ex.A.1). In the said revocation notice (Ex.A.7), there is no reference about any such coercion or force said to have been inflicted by the 1st defendant in getting the Power of Attorney (Ex.A.1) from the plaintiff. Apart from Ex.A.7, the plaintiff had issued Legal Notice (Ex.A.6) dated 05.09.2005 to the 1st defendant revoking the Power of Attorney (Ex.A.1). In Ex.A.6 also there is no whisper about the alleged force or coercion by the 1st defendant. This factual aspect found in the case would clearly show that the theory of obtaining the Power of Attorney (Ex.A.1) by the 1st defendant from the plaintiff by force is not true and the theory of coercion, dominant position etc falls to the ground.

24.With the regard to the prayer made by the plaintiff to direct the 1st defendant to re-transfer B Schedule shares, it is submitted by the learned counsel for the respondents/defendants that a careful perusal of Ex.B.3 (Share Transfer Form) would clearly show that the plaintiff herself signed the Share Transfer Form concerning Schedule B shares in favour of her father viz., 1st defendant. Ex.B.4-Board Resolution would further reveal that those shares were subsequently transferred as per the resolution passed by the company concerning B schedule shares in favour of the 1st defendant. The plaintiff failed to seek any relief concerning transfer made by the company based on Ex.B.3. Without questioning the transfer by seeking relief of setting aside the transfer already made, the plaintiff is simply seeking direction to the the 1st defendant to re-transfer the B schedule shares and such a relief is not maintainable. The plaintiff failed to question the share transfer effected by the company in favour of the 1st defendant. The plaintiff failed to implead the company concerning the B schedule shares. Further, as per Section 111(A) of the Companies Act, the Company Law Board is empowered to decide the issue with regard to Schedule B shares. Therefore, the relief with regard to Schedule B shares is not maintainable.

25.With regard to the submission made by the learned senior counsel for the appellant/plaintiff that B schedule shares were transferred only on 20.06.2005, whereas the seal affixed on Ex.B.3 would show that the share transfer form (Ex.B.3) was presented before the Registrar of Companies as early as on 07.06.2005, it is replied by the learned counsel for the respondents/defendants that as per Section 108(1A)(a) of the Companies Act, every Share Transfer Form shall, before it is signed by or on behalf of the transferor and before any entry is made therein, be presented to the prescribed authority, being a person already in the service of the Government, who shall stamp or otherwise endorse thereon the date on which it is so presented. In the instant case, the Share Transfer Form (Ex.B.3) was presented on 07.06.2005 and seal was obtained from the concerned authority under Section 108(1A)(a) of the Companies Act and thereafter, transfer of shares was effected on 20.06.2005. Therefore, the transfer of shares was done in accordance with law and as such, it is incorrect to state that Ex.B.3 is a sham document. Moreover, the suit B schedule shares were transferred prior to Ex.A8 to A.10 ie., second Power of Attorney and affidavits executed by the plaintiff dated 27.09.2005 and 28.09.2005. The said transfer of shares was made on 20.06.2005 as evidenced from Ex.B3 & B4 viz. share transfer certificate and resolution passed by the Company concerning Suit 'B' schedule share. Further, the plaintiff failed to seek any relief concerning the transfers of shares effected long prior to Ex.A8 to A10.

26.Similarly, with regard to the submission made by the learned senior counsel for the appellant/plaintiff that since no consideration has been passed for transferring suit 'B' schedule shares, the transfer is invalid and that signature found in Share Transfer Form (Ex.B3) is forgery, it is contended by the learned counsel for the respondents/defendants that no such plea of forgery was made by the plaintiff in the plaint.

27.With regard to the submission made by the learned senior counsel for the appellant/plaintiff that Ex.A.9 & A.10

(affidavits dated 28.09.2005) were obtained by the 1st defendant under undue influence, coercion and fraud, it is submitted by the learned counsel for the respondents/defendants that the plaintiff miserably failed to prove the theory of undue influence, coercion and fraud. Apart from the aforesaid theory of undue influence, coercion and fraud, the plaintiff alleged in her plaint as well as in her evidence that she was mentally sick and she was under medication for depression and taking advantage of her sickness, the 1st defendant obtained her signatures in self-services documents. But, this theory of mental illness was not proved by the plaintiff and the said theory of mental illness is totally false. Further, the learned counsel appearing for the respondents/defendant would submit that the person who pleaded undue influence has to prove the said allegation. Therefore, in the instant case, it is incorrect to state that it is for the defendants to prove that the documents were not obtained by undue influence, coercion and fraud. In support of his contention, the learned counsel for the respondents/defendants has also relied upon the following decisions_

i)AIR 1951 SC 280 (Bishundeo Narain and others Vs. Seogeni Rani and others)

ii)AIR 1955 SC 363 (Naresh Charan Das Gupta Vs. Paresh Charan Das Gupata and anothers)

iii)AIR 1963 SC 1279 (Ladli Prashad Jaiswal Vs. The Karnal Distillery Co ltd., Karnal and others)

28.Further, the learned counsel for the respondents/defendants by inviting the attention of this Court to various contradictions in the evidence and affidavits of the plaintiff with regard to her visit to Mettupalayam concerning Ex.A.8 to Ex.A.10, submitted that the plaintiff was not consistent in her case and she has not discharged her burden to prove that there was undue influence, coercion and fraud in obtaining Ex.A.8 to Ex.A.10.

29.With regard to the submission made by the learned senior counsel for the appellant/plaintiff that the Trial Court has failed to frame a proper issue as to whether the plaintiff had gifted the movable properties under Ex.A.10 as contemplated under Section 122 & 123 of the Transfer of Property Act, it is the reply of the learned counsel appearing for the respondents/defendants that remanding the matter to the trial Court is unwarranted and the Trial Court has framed correct issues and decided the case properly. In this regard, the learned counsel for the respondents/defendants has also relied upon the following decisions reported in AIR 1981 SC 1274 (Ku.Sonia Bhatia vs. State of UP and otehrs and AIR 1974 SC 1728 (Vasudev Ramchandra Shelat Vs. Pranial Jayanand Thaker and others). The learned counsel further submitted that the plaintiff cannot question the gift, since it was also not pleaded in the plaint.

30.The learned counsel for the respondents/defendants has also submitted that the plaintiff is fully aware that she has no share in any of the properties of erstwhile joint family, since she was married in the year 1986. The Hindu Succession Act, 1956 was amended in the year 1990 by the State of Tamil Nadu by passing the Hindu Succession (Amendment) Act, 1990, known as Tamil Nadu Act 1 of 1990, which came into effect on 25.03.1989. As per the said amended Act, the daughter is also included as co-parcener in her own right in the same manner as son. But, the said amended Act is not applicable to the daughter who married before the date of commencement of the said Act. Therefore, as per the said amended Act, the plaintiff is not entitled to claim any share in the erstwhile joint family. Moreover, there is no joint family on the date of passing of Amendment Act in view of the division took place between the defendants 1 & 3 as per the registered Partition Deed dated 21.02.1994 (Ex.B.7), under which the defendants 1 & 3 divided all the joint family properties available at that time. Despite the said legal position, the plaintiff is pressurizing the defendants demanding a share in the various immovable properties and she started to file various vexatious legal proceedings including criminal complaint against her father (1st defendant) and others before the Magistrate Court. The plaintiff is a pawn in the hands of her husband who is behind all the vexatious litigations.

31.With regard to rendition of accounts of the plaintiff from the 1st defendant during the period he acted as her power agent, it is the submission of the learned counsel for the respondents/defendants that under law the plaintiff is entitled to seek accounts within three years from the date of revocation of Power of Attorney as per Article 3 of the Limitation of Act, 1963. But, in the instant case, the suit was filed by the plaintiff after a period of three years from the date of cancellation/revocation of the power of attorney; under such circumstances, the prayer for rendition of accounts is not maintainable.

32.With regard to the reception of additional evidence in the appeal, it is the submission of the learned counsel for the defendants that the plaintiff has not given sufficient reason for not filing the documents at the time of trial and the plaintiff cannot introduce the new facts at the time of appeal; as such, the petition filed by the plaintiff to receive additional documents shall be rejected. Thus, the learned counsel for the respondents/defendants sought for dismissal of the appeal.

33.We have given our anxious consideration to the submissions made on either side and carefully perused the materials available on record.

34.In the view of the above submissions made on either side, the following points arose for consideration in this appeal_

1)Whether the plaintiff was forced to execute a registered Power of Attorney in favour of the 1st defendant on 17.01.1985?

2)Whether it is for the defendants to prove that Ex.A.8 to Ex.A.10 were not obtained under undue influence, coercion and fraud?

3)Whether Ex.B.3, Share Transfer Form, is a sham document?

4)Whether the appeal is liable to be remanded, since the trial Court has failed to frame an issue as to whether the plaintiff has gifted the movable properties in terms of Section 122 & 123 of the Transfer of Property Act?

5)Whether the plaintiff is entitled to rendition of accounts from the 1st defendant?

6)Whether the defendants 1 & 2 have made out any case under Order 41 Rule 27 of CPC for reception of additional documents in the appeal?

Point Nos.1 & 2:-

35.It is the case of the plaintiff that the plaintiff is the elder daughter of the 1st defendant. The 3rd defendant is her sister and 4th defendant is her brother-in-law. The 1st defendant's family had various movable and immovable properties in Mettupalayam, Coimbatore and other places, which are being managed by the 1st defendant and those properties were acquired from the joint family funds. The 1st defendant has been hostile towards the plaintiff from the earlier days. Hence, even before her marriage, the plaintiff was forced to execute a registered Power of Attorney in favour of the 1st defendant on 17.01.1985. After execution of the said Power of Attorney, at a later part of the year 1986, the plaintiff got married and she left to USA and joined her husband and thereafter, she returned to India only in the year 1996. To comply with the tax laws in USA, the plaintiff required some information from the 1st defendant with regard to her affairs in India. Hence, she sent letters through her Auditor on 23.02.2005 & 02.06.2005 to the 1st defendant seeking the details of her affairs in India. Since the plaintiff's father (1st defendant) did not furnish those details, as per the advise of her Auditor, she cancelled the Power of Attorney (Ex.A.1) dated 17.01.1985 after a period of 20 years, by sending the legal notice notice dated 05.09.2005

(Ex.A.6). In the past 20 years, she has not chosen to allege, at any situation, that the Power of Attorney Deed dated 17.01.1985 was obtained by the 1st defendant under coercion and force. In fact, in the legal notice dated 05.09.2005 (Ex.A.6) issued by the plaintiff with regard to revocation of the Power of Attorney (Ex.A.1) as well as in the paper publication dated 09.09.2005 (Ex.A.7) effected by the plaintiff, under which she revoked the Power of Attorney (Ex.A.1), absolutely there is no allegation to the effect that the said Power of Attorney (Ex.A.1) was obtained by the 1st defendant under undue influence, coercion and fraud. Therefore, it could be easily presumed that Power of Attorney (Ex.A.1) was executed by the plaintiff voluntarily in favour of her father-1st defendant.

36.With regard to Ex.A.8 to Ex.A.10, second Power of Attorney dated 27.09.2005 and two affidavit dated 28.09.2005, said to have been obtained by the 1st defendant from the plaintiff under undue influence, coercion and fraud, it is the case of the plaintiff that based on the advice of her cousin Chandini and her husband Suryakumar, the plaintiff visited Mettupalayam for the purpose of resolving the matter with her father (1st defendant) and she stayed in the house for three days. During the said visit, the plaintiff was coerced by the 1st defendant to execute a fresh Power of Attorney (Ex.A.8) to attend to her affairs. Therefore, left with no other alternative she went to the Registrar's Office and signed the fresh Power of Attorney dated 27.09.2005 (Ex.A.8) at the instance of the 1st defendant. The 1st defendant also took signatures of the plaintiff in two affidavits (Ex.A.9 & Ex.A.10) which the plaintiff was not allowed to read. It is further case of the plaintiff that the 1st defendant had brought the Notary to his office and the plaintiff was coerced to sign the affidavits. Since the plaintiff was under medication for depression ever since the birth of her child, the 1st defendant, by taking advantage of that and being in a dominating position, obtained signatures of the plaintiff in the self-serving documents. Thereafter, she left for Bangalore and again she came back to Mettupalayam during the year 2006 for the purpose of withdrawing funds from Corporation Bank; at that time, she requested the 1st defendant to handover the xerox copies of the documents obtained from her and the 1st defendant after initial hesitance parted with the documents. On perusal of the said copies of the documents, the plaintiff was shocked to find that the said documents were fraudulently obtained from the plaintiff by the 1st defendant. Hence, after going to Bangalore, the plaintiff caused the legal notice dated 09.01.2006 (Ex.A.6) to the 1st defendant and issued paper publication dated 11.01.2006 (Ex.A.7), by revoking the second Power of Attorney (Ex.A.8).

37.In this regard, the learned senior counsel for the appellant/plaintiff made a detailed argument by relying upon Section 16 of the Contract Act and submitted that only the person, who is in a position to dominate the will of another, has to prove that the such contract was not induced by undue influence. That apart, the learned senior counsel for the appellant/plaintiff submitted that Ex.B.5 & Ex.B.6 are the letters dated 27.09.2005 said to have been addressed by the plaintiff to the Managers of the Corporation Bank and Indian Bank, whereby a request was made to include the 1st defendant as joint account holder of the deposits of the plaintiff pursuant to the fresh General Power of Attorney dated 27.09.2005.

38.According to the learned senior counsel for the appellant/plaintiff, by virtue of Power of Attorney executed by the plaintiff, a fiduciary relationship existed between the plaintiff and the 1st defendant from 17.01.1985 till 05.09.2005. The mere existence of the fiduciary relation raises the presumption of undue influence and the Court will hold the transaction to be bad unless the presumption of undue influence is rebutted by cogent evidenced adduced by the donee.

39.That apart, the learned senior counsel for the appellant/plaintiff submitted that when a person who is in a position of dominating the will of the another enters into a contract with him, it is presumed that it is executed under undue influence. In the instant case, the 1st defendant was in the position of dominating the will of the plaintiff, when the alleged Power of Attorney deeds, dated 17.01.1985 and 27.09.2005 (Exs.A.1 & 8), two affidavits dated 28.09.2005 (Ex.A9 & Ex.A.10) were executed and letters (Ex.B.5 & Ex.B6) addressed to the Banks.

40.Hence, it is the submission of the learned senior counsel for the appellant/plaintiff that since the documents were executed when fiduciary relationship existed between the parties, the 1st defendant was in a dominating position, there is a presumption that the documents were obtained under undue influence and coercion. Therefore, it is for the 1st defendant to prove that the documents were obtained not under undue influence and coercion; whereas the 1st defendant has not discharged his burden cast upon him in this case. Under such circumstances, the Trial Court ought to have decreed the suit. In support of his contentions, the learned senior counsel for the appellant/plaintiff has also relied upon the following decisions_

1)AIR 1961 Madras 190 [M.A.AbdulMalickSaheb Vs. T.P.Muhammed Yusuf Sahib and others]

2)(2004)9 SCC 468 (Krishna Mohan Kul @ Nani Chanrankul and another)

3)(2014)4 SCC 196 (Pratima Chowdhury Vs. Kalpana Mukherjee and another)

41.But, as contended by the learned counsel for the defendants, it could be seen that either in the legal notice dated 05.09.2005 revoking the earlier Power of Attorney (Ex.A.1) and subsequent legal notice dated 09.01.2006 marked as Ex.A.11, revoking the second power of attorney (Ex.A.8), absolutely there is no whisper to the effect that those documents were obtained under undue influence and coercion. On the other hand, the evidence on record would show that on 27.09.2005, the plaintiff voluntarily went to the Registrar's office and executed the Power of Attorney (Ex.A.8); endorsement made in by the sub-Registrar in the Power of Attorney also confirms the same.

42.In fact, in the proof affidavit/plaint, the plaintiff has admitted that she went to the office of the Sub-Registrar and signed the Power of Attorney. But, contrary to the said statement, in her cross-examination, she stated that she signed the Power of Attorney (Ex.A.8) in a car. This contradiction exposed the falsity of her case. It is also seen that the Plaintiff in para 3 of the cross-examination alleged that apart from her, there are other persons in the car viz., her father (1st defendant), one Palanisamy, Peon and driver were present.

43.In fact, the plaintiff belatedly filed a private complaint before the Judicial Magistrate at Mettupalayam in the year 2009 i.e., almost four years, after execution of the Power of Attorney (Ex.A.8), dated 27.09.2005, and after filing of the suit against the 1st defendant, Nanjaraj Santhappa and his wife Kaveri Nanjaraj Santhappa, Chandini, San Suryakumar and Palanisamy. The said complaint was marked as Ex.B.1. In the said complaint (Ex.B.1), it has been alleged by the plaintiff that the 1st defendant with the help of other accused persons forced her to execute a fresh General Power of Attorney in his favour on 27.09.2005 and also obtained her signatures on many blank stamp papers and stamped type set of papers under duress which were later converted into affidavits for gifts of immovable assets. But, in the plaint in para 7, the plaintiff had alleged that the 1st defendant had brought Notary to his office and the plaintiff was coerced to sign the affidavits. Contrary to her plaint allegations, after four years, the plaintiff alleged in Ex.B.1 (complaint) that the affidavits were prepared based on the signature obtained in blank stamp papers. The contradictory statement made by the plaintiff itself would go to show that the allegations levelled by the plaintiff against the 1st defendant are totally false. On the other hand, those documents were executed by the plaintiff voluntarily.

44.Similarly, in Ex.B.2, plaint filed by the plaintiff herein before the City Civil Court at Bangalore in another suit in O.S.No.6285 of 2008, the plaintiff herein alleged that the plaintiff was made to sign another document relating to transfer of her various movable properties by way of gift to Krishnaswamy (1st defendant herein). But, in the present suit, in plaint at para No.7, she alleged that she was not even allowed to read the affidavits and instead, the 1st defendant took her signature forcefully. The plaintiff further alleged in para 7 of the plaint that she visited Mettupalayam during January 2006 for the purpose of withdrawing funds from Corporation Bank and at that time, she requested her father (1st defendant) to handover the affidavits. He reluctantly handed over the affidavits and while returning to Bangalore, she glanced through the same and was shocked to note the contents of the documents. As per the present plaint allegation, she is unaware of the contents of the documents on the date of signing the same and she came to know only after allegedly receiving the copies of the same in the month of January, 2006.

45.Further, contrary to the present plaint allegation, the plaintiff in Ex.B.2 (plaint in another partition suit filed before the City Civil Court at Bangalore) alleged that Notary was present at the office of Krishnaswamy (1st defendant herein) and documents were executed. The plaintiff was also made to sign another document relating to transfer of her various movable properties by way of gift to Krishnaswamy (1st defendant herein). The plaintiff is not in agreement with the contents of these documents. After returning to Bangalore and upon realizing the gravity of the matter, the plaintiff issued a legal notice on 09.01.2006 from her advocate (Duo Associates, Bangalore) informing the 1st defendant about the revocation of the Power of Attorney held by him. These allegations in Ex.B.2 would clearly reveal that the plaintiff is fully aware of the contents of the affidavits on the date of execution of the same. Ex.B.2 would further reveal that she was also having the copies of the same on the date of execution itself, that is why she was able to give instructions to her counsel on 09.01.2006. Therefore, it is clear that the plaintiff has not brought any consistent case. These contradictions would clearly show that the theory of undue influence, coercion and fraud alleged by the plaintiff falls to the ground and she has not come forward with a consistent case.

46.Further, we find that on 27.09.2005, the plaintiff independently went to the sub-registrar's office and signed the documents and also addressed letters Ex.B.5 & Ex.B.6 and on the next day, she executed two affidavits Ex.A.9 & Ex.A.10. The plaintiff was doing the said acts independently within two days. Therefore, it cannot be said that she was under undue influence and coercion. Only if the plaintiff discharged her burden that there was undue influence and coercion, the burden will shift to the 1st defendant to prove that the documents were obtained not under undue influence and coercion.

47.Further, it is in law that the person who pleaded undue influence, coercion, fraud and forgery has to prove such allegations positively. It is not possible for the opponent to prove the same in the negative. Merely using the words 'undue influence, coercion and fraud' will not be helpful in any way to prove the case of the plaintiff that the documents were obtained under undue influence and coercion. In this regard, it would be appropriate to place a reference in the decision reported in AIR 1951 SC 280 [Bishundeo Narain and others Vs. Seogeni Rani and others], wherein it has been held as follows_

> "General allegations are insufficient even to amount to an averment of fraud of which any court ought to take notice, however strong the language in which they are couched may be and the same applies to undue influence and coercion."

In the decision reported in AIR 1976 SC 163 [Afsar Shaikh and another Vs. Soleman Bibi and others], it has been held as hereunder_

> "It is not sufficient for a person seeking the relief to show that the relations of the parties have been such that the one naturally relied upon the other for advice, and the other was in a position to dominate the will of the first in giving it. "More than mere influence must be proved so as to render influence in the language of the law, 'undue'. "

Therefore, it is clear that merely making general allegations will not be helpful to the case of the plaintiff. In the instant case, the plaintiff has made several contradictory statements as observed above with regard to undue influence and coercion, which would show that the documents were executed by the plaintiff voluntarily

48.It is yet another submission of the learned senior counsel for the appellant/plaintiff that the plaintiff is suffering from mental depression ever since the birth of her child and taking advantage of the same, the documents were obtained by the 1st defendant. In order to prove the same, on the side of the plaint, one Ravi Shankar Rao, Pshychiatrist, was examined as P.W.2. But, a careful scrutiny of his evidence would show that the plea of mental illness is false. In fact, P.W.2 had admitted in his evidence that there is no document to show that he had treated the plaintiff from 22.06.1998 to

20.11.2005, during which period the documents were obtained by the 1st defendant, according to the plaintiff by taking advantage of her mental illness. The relevant portion in the evidence of P.W.2 reads as follows_

> "There is nothing in writing to show that I have treated the plaintiff from 22.06.1998 to 20.11.2005."

Therefore, the theory of mental illness pleaded by the plaintiff has not been established. We do not find any force in the submission made by the learned senior counsel for the appellant/plaintiff that the documents were obtained by the 1st defendant from the plaintiff under undue influence, coercion and fraud, while she was under mental depression.

49.It is also submitted by the learned senior counsel for the appellant/plaintiff that there was a fiduciary relationship which existed between the plaintiff and the 1st defendant from 17.01.1985 to 05.09.2005. During the subsistence of the fiduciary relationship, 50536 shares standing in the name of the plaintiff were alleged to have been transferred by way of sale to the name of the 1st defendant (by Ex.B.3). Despite this fiduciary relationship, the plaintiff had allegedly gifted all of her movables by way of two affidavits dated 28.09.2005 (Ex.A.9 & Ex.A.10). Therefore, according to the learned senior counsel for the appellant/plaintiff, all the said transfers are void.

50.But, on a perusal of the documents viz., Ex.B.3, Ex.A.9 & Ex.A.10, it is seen that those documents were not executed based on the Power of Attorney executed by the plaintiff in favour of the 1st defendant. The share transfer form-Ex.B.3 was signed by the plaintiff independently without any reference to the Power of Attorney executed by her. Similarly, Ex.A.9 & Ex.A.10 were also executed by the plaintiff voluntarily on her own accord in an independent capacity. Therefore, the submission made by the learned senior counsel for the appellant/plaintiff in this regard has nothing to do with the Power of Attorney executed by the plaintiff. Therefore, the submission made by the learned senior counsel for the appellant/plaintiff on the concept of fiduciary relationship, has no significance in this matter.

Point No.3:-

51.It is the case of the appellant/plaintiff that after her marriage, she left to USA in the year 1986 and returned to India only in the year 1996 and thereafter, she has been residing in India. To comply with the tax laws in USA and to file her tax returns, she required information about her affairs in India. The plaintiff's Auditor sent two letters dated 23.02.2005 and

02.06.2005, which were marked as Ex.A.2 & Ex.A.3, calling upon the 1st defendant to provide the necessary information with regard to the affairs of the plaintiff for filing the tax returns in USA. The letter dated 02.06.2005 was received by the 1st defendant on 06.06.2005. On the very next day, i.e, on 07.06.2005 the Share Transfer Form-Ex.B.3 was presented with recitals containing sale consideration to the Registrar of Companies, which clearly proves the fabrication of Ex.B.3 to suit the 1st defendant. Thus, according to the plaintiff, through the share transfer form-Ex.B.3, the 1st defendant transferred the shares of the plaintiff in Encee Aromatics Pvt Ltd, worth about Rs.5,05,360/- in his favour. The 1st defendant in his evidence, as D.W.1, has stated that the plaintiff had sold the share on her own for consideration after deciding to do so. In the cross-examination, D.W.1 had stated that the plaintiff had given the shares of Encee Aromatics as gift and he has not paid any consideration for Ex.B.3. The son-in-law of the defendant viz., the 4th defendant had signed Ex.B.4, certified copy of the board resolution, dated 20.06.2005, resolving to transfer the shares from the name of the plaintiff to the name of the 1st defendant. The 1st defendant has submitted the document Ex.B.3 for effecting transfer of shares in his name and there is no witness produced by the 1st defendant for transfer of shares by the plaintiff. Therefore, the stand taken by the 1st defendant in the written statement, proof affidavit in lieu of examination in chief and cross-examination is contradictory to one another. Ex.B.3 is dated as 20th June 2005, but it was presented on 7th June 2005 before the Registrar of Companies. Moreover, as per Ex.B.3, a consideration of R.5,05,360/- was paid, but, according to the written statement and evidence let in during cross-examination by the 1st defendant, the shares were transferred as gift by the plaintiff and the 1st defendant did not pay any consideration for effecting transfer. According to the learned senior counsel for the appellant/plaintiff, all these aspects would clearly show that the said transfer of shares is sham. The 1st defendant has not chosen to examine the witness to Ex.B.3 to prove that it was executed out of free will of the plaintiff. Since the said document is share, the 1st defendant ought to have been directed to retransfer the shares to the name of the plaintiff. Thus, it is the submission of the learned counsel for the appellant/plaintiff that trial Court without considering these contradictions, dismissed prayer of the plaintiff for retransfer of the shares also.

52.But, from a perusal of Ex.B.3, We find that in Ex.B.3 the plaintiff herself has signed the share transfer form concerning schedule B shares in favour of her father-1st defendant. Ex.B.4 further reveals that those shares have subsequently been transferred as per the resolution passed by the company in favour of the 1st defendant. But, without seeking for setting aside the transfer already made, the plaintiff has directly asked the prayer for directing the 1st defendant to retransfer the schedule B shares; therefore, such a prayer itself is not maintainable.

53.Moreover, as per Section 111(A) of the Companies Act, 1956, the Company Law Board is empowered to decide the issue with regard to Schedule B shares. Section 111(A) reads as follows_

> "111A.1 Rectification of register of transfer.
>
> (1)...
>
> (2)...
>
> (3)The Company Law Board may, on an application made by a depository, company, participant or investor or the Securities and Exchange Board of India within two months from the date of transfer of any shares or debentures held by a depository or from the date on which the instrument of transfer or the intimation of transmission was delivered to the company, as the case may, be, after such enquiry as it thinks fit, direct any company or depository to rectify register or records if the transfer of the shares or debentures is in contravention of any of the provisions of the Securities and Exchange Board of India Act, 1992 (15 of 1992), or regulations made thereunder or the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986).
>
> (4)The Company Law Board while acting under sub- section (3), may at its descretion make such interim order as to suspend the voting rights before making or completing such enquiry.
>
> (5)The provisions of this section shall not restrict the right of a holder of shares or debentures, to transfer such shares or debentures and any person acquiring such shares or debentures shall be entitled to voting rights unless the voting rights have been suspended by an order of the Company Law Board.
>
> (6)Notwithstanding anything contained in this section, any further transfer, during the pendency of the application with the Company Law Board, of shares or debentures shall entitle the transferee to voting rights unless

the voting rights in respect of such transferee have also been suspended.

(7)The provisions of sub- sections (5), (7), (9), (10) and (12) of section 111 shall, so far as may be, apply to the proceedings before the Company Law Board under this section as they apply to the proceedings under that section].

A reading of the above said provision of law would show that the remedy for the plaintiff, if any, is vest with the Company Law Board. Further, in Ex.A.9 & Ex.A.10 (notarized affidavits) the plaintiff has confirmed the transfer of schedule B shares. The relevant sentences in Ex.A.9 & Ex.A.10 reads as follows_

"Encee Aromatics Private Limited : Equity shares of 50536 numbers have already been transferred on 20.06.2005."

The above sentence would reveal that the suit schedule B shares were already transferred in favour of the 1st defendant and the plaintiff failed to question the said transfer of shares. Therefore, mere relief of retransfer is not maintainable.

54.But, it is the consistent case of the 1st defendant that the plaintiff voluntarily transferred the suit schedule B shares by signing the share transfer form (Ex.B.3) by herself and based on that the suit shares were transferred in his favour. As per the statement made by D.W.1 (1st defendant) in his cross-examination, it is clear that the suit schedule B shares were given by the plaintiff to the 1st defendant as gift and he did not pay any consideration for the same. It is the argument of the learned senior counsel for the appellant/plaintiff that since no consideration has been passed for transferring suit schedule shares, the transfer is invalid. But, We are not inclined to accept the said submission made by the learned senior counsel for the appellant/plaintiff. In this regard, it would be appropriate to refer Section 54 of the Transfer of Property Act, which reads as follows_

"54.Sale defined_ "Sale" is a transfer of ownership in exchange for a price paid or promised or part - paid and part-promised."

A reading of the above definition for "Sale" would show that consideration is not must for effecting sale. It is the specific case of the 1st defendant that the transaction concerning suit schedule B shares is not a sale and it is only a gift given by her daughter-plaintiff.

55.A perusal of Ex.B.3 would show that it was presented before the Registrar of Companies on 07.06.2005, whereas transfer of shares was effect on 20.06.2005, subsequent to the date of presentation. In this regard, it is the submission of the learned senior counsel for the appellant/plaintiff that since the transfer of shares was effected only after the presentation of the share transfer form (Ex.B.3) before the Registrar of Companies, it is a sham document. But, We find that as per Section 108(1A)(a) of the Companies Act, every share transfer form shall be presented before the concerned authority for the purpose of getting it stamped before effecting the transfer. Section 108(1A)(a) reads as follows_

> "108(1A) Every instrument of transfer of shares shall be in such form as may be prescribed, and_
>
> (a)every such form shall, before it is signed by or on behal fof the transferor and before any entry is made therein, be presented to the prescribed authority, being a person already in the service of the Government, who shall stamp or otherwise endorse thereon the date on which it is so presented, "

Therefore, from the above provision of law, it is clear that in the instant case, after getting the share transfer form stamped by the Registrar of Companies, the transfer of shares was effected. Absolutely, there is no infirmity in the said transfer. If the plaintiff has any grievance, she has to approach the Company Law Board. Therefore, We are not inclined to accept the submission made by the learned senior counsel for the appellant/plaintiff in this regard.

Point No.4:-

56.It is the submission of the learned senior counsel for the appellant/plaintiff that it is the case of the 1st defendant that by Ex.A.9 & Ex.A.10 (two affidavits dated 28.09.2005), the plaintiff has gifted the movables which form part of plaint A & B schedule properties. In this regard, the learned senior counsel for the appellant/plaintiff relied upon Sections 122 & 123 of the Transfer of Properties Act and submitted that Section 122 defines the 'gift' and Section 123 states as to how the transfer is effected. Further, as per Section 122, gift should be made voluntarily without any consideration and should be accepted by the donee. But, the 1st defendant in para 9 of the written statement has stated that the plaintiff realized that she may not be given any further property/benefit; therefore, even according to the 1st defendant, the plaintiff executed the gift under threat of being deprived of any further property/benefit. The learned senior counsel for the appellant/plaintiff would further submit that in para 15 of the written statement, the 1st defendant has stated as follows_

> "The plaintiff had enormous benefits during the construction of the house at Bangalore

besides other benefits when she was in the Unites States and having in mind all these benefits only she agreed to execute the gift in respect of the items mentioned in schedule A so that parity will be restored in the family."

Further in para 26 of his written statement, the 1st defendant has stated as follows_

"It is false to state that the affidavits were executed without any rhyme or reason or without consideration. They are perfectly valid. As already stated, the plaintiff had several benefits, which prompted her to execute affidavit."

Therefore, 'past consideration' is 'good consideration' as per Sections 2(d) and Section 127 of the Indian Contract Act. In the instant case, the ingredients of Section 122 of Transfer of Property Act are not satisfied so as to make a valid gift. Moreover, as per Section 123 of Transfer of Property Act, for making a gift of movable property, the transfer may be by a registered instrument signed and attested by two witness or by delivery. In the present case, there was no registered instrument effecting gift. The 1st defendant was holding the documents as agent even prior to the date of alleged gifting. Therefore, there could not have been any delivery of movables effecting transfer as required under Section 123 of the Transfer of Property Act. There was no valid gift in the eye of law. But, the trial Court has not framed any issue in this regard. Therefore, the matter has to be remanded back to the trial Court, after setting aside the judgment and decree of the trial Court, for fresh consideration.

57.Before dealing with the above submission made by the learned senior counsel for the appellant/plaintiff, it would be appropriate to extract Sections 122 & 123 of the Transfer of Properties Act.

Section 122 defines the 'Gift' and it reads as follows_

"Gift" is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

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

Section 123 says how the transfer is effected and it reads as follows_

> "For the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.
>
> For the purpose of making a gift of movable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.
>
> Such delivery may be made in the same way as goods sold may be delivered."

A reading of the Section 123 would show that for the purpose of making a gift of movable properties, the transfer may be effected either by a registered instrument signed or by delivery. Such a delivery may be made in the same way as goods are sold and delivered. In the present case, the plaintiff effected the gift in question and the same is evident from the affidavit executed by her viz., Ex.A.10, wherein it has been stated by the plaintiff as follows_

> "I hereby declare and confirm that out of my own free will, I have gifted all the movable assets stated above to my father Sri.N.Krishnaswamy. Hereafter, my father has to take necessary steps to pay income tax if any payable to the department and to file return."

From a reading of the above statement of the plaintiff, it is clear that out of free will, she has gifted the suit schedule A assets to the 1st defendant. Furthermore, We have already come to the conclusion that Ex.A.9 & Ex.A.10 were obtained by the 1st defendant not under undue influence, coercion and threat and that the plaintiff had voluntarily executed the same. Hence, We are of the opinion that it is only a natural transaction.

58.In this regard, it would be appropriate to place a reference in the decision of the Hon'ble Supreme Court reported in AIR 1981 SC 1274 [Ku.Sonia Bhatia Vs. State of UP and others), wherein it has been held as follows_

> "The concept of gift is diametrically opposed to the presence of any consideration or compensation. A gift has aptly been described as a gratuity and an act of generosity and stress is

on the fact that if there is any consideration then the transaction ceases to be a gift. Complete absence of consideration is the main hallmark which distinguishes a gift from a grant or for that matter other transactions which may be for valuable or adequate consideration.

A gift is undoubtedly a transfer which does not contain any element of consideration in any shape or form. In fact, where there is any equivalent or benefit measured in terms of money in respect of a gift the transaction ceases to be a gift and assumes a different colour. The motive or the purpose of making a gift should not be confused with the consideration which is the subject matter of the gift. Love, affection, spiritual benefit and many other factors may enter in the intention of the donor to make a gift but these filial considerations cannot be called or held to be legal considerations as understood by law. It is manifest, therefore, that the passing of monetary consideration is completely foreign to the concept of a gift having regard to the nature, character and the circumstances under which such a transfer takes place.

Thus, Section 122 of the Transfer of Property Act clearly postulates that a gift must have two essential characteristics (1) that it must be made voluntarily, and (2) that it should be without consideration. This is apart from the other ingredients like acceptance, etc."

A reading of the above judgments would show that the gift must have two essential characteristics (1)that it must be voluntarily, and (2) that it should be without consideration. In the instant case, the evidence on record would show that the suit schedule assets were given voluntarily by the plaintiff to the 1st defendant by way of Ex.B.3, Ex.A.9 & Ex.A.10, without consideration. But, later after three months, the plaintiff took a different stand and an inconsistent statement that it was obtained under undue influence and coercion, which the plaintiff miserably failed to prove. Therefore, the Trial Court, by framing specific issues as to whether the plaintiff is entitled for declaration as prayed for, has rendered a finding and rejected the claim of the plaintiff. Such a issue is sufficient to come to the conclusion that whether the gift is valid or not. Reframing of issues as to whether the gift deed is valid and thereby putting the burden of proof on the defendants is not permissible under law. In this regard, it would be useful to make a reference in the judgment reported in AIR 1963 SC 884

[Nedunuri Kameswaramma Vs. Sampati Subba Rao], wherein it has been held by the Hon'ble Supreme Court as follows_

> "Where the parties went to trial fully knowing the rival case and led all the evidence not only in support of their contentions but in refutation of those of the other side, it cannot be said that the absence of an issue was fatal to the case, or that there was that mix-trial which vitiates proceedings. The suit could not be dismissed on this narrow ground, and also there is no need for a remit, as the evidence which has been led in the case is sufficient to reach the right conclusion and neither party claimed that it had any further evidence to office."

Therefore, We are of the opinion that evidence on record would show that the properties described in suit schedule A & B were gifted by the plaintiff to the 1st defendant without consideration. Therefore, there is no need to remand the matter back to the trial Court.

Point No.5:-

59.One of the prayer of the plaintiff in the suit is to direct the 1st defendant to render true and correct account of appropriation of the plaintiff's funds and money due to the plaintiff during the period he acted as her power agent. In this regard, it is the submission of the learned senior counsel appearing for the appellant/plaintiff that according to the 1st defendant, the plaintiff executed a Power of Attorney Deeds (Ex.A.1 & Ex.A.8) appointing the 1st defendant as her power agent. Therefore, the 1st defendant is liable to render the accounts to his principle viz., the plaintiff. But, the trial Court has not rendered any reason as to how the plaintiff being the principle is not entitled to get rendition of accounts from her agent-1st defendant. Therefore, according to the learned senior counsel for the appellant/plaintiff, the plaintiff is entitled for rendition of accounts.

60.It is clear that the plaintiff is seeking for rendition of accounts based on the Power of Attorney deeds (Ex.A.1 & Ex.A.8) executed by her in favour of the 1st defendant. In the light of the Article 3 of the Limitation Act, 196, the plaintiff is entitled to seek accounts within three years from the date of revocation of Power of Attorney. In the instant case, the plaintiff revoked the Power of Attorney dated 17.01.1985 (Ex.A.1) on 09.09.2005, hence, the suit ought to have been filed on or before 09.09.2008; but it was filed only on 22.10.2008 ie., after expiry of the three years limitation period.

Therefore, the prayer of the plaintiff for rendition of accounts is barred by limitation.

61.With regard to the second Power of Attorney (Ex.A.8) dated 27.09.2005, the 1st defendant specifically pleaded that he has not done anything as per Ex.A.8. The plaintiff has also failed to produce any documents in this regard. Further, the plaintiff has also failed to put any suggestion to the 1st defendant to question about the specific act or things done by him based on the Power of Attorney dated 27.09.2005 (Ex.A.8). Moreover, the power of attorney (Ex.A.8) was in force only for a short period ie., from 27.09.2005 to 09.01.2006. Therefore, the plaintiff is not entitled to get the relief of rendition of accounts based on Ex.A.8 also.

62.Moreover, the main allegation of the plaintiff is only with regard to the transfer of shares-Ex.B.3 and withdrawal of amounts from the banks. But, as observed earlier, We find that the transfer of shares as well as withdrawal of amount by the 1st defendant are not in the capacity of the Power Agent, but in the independent capacity of the 1st defendant based on the letter addressed by the plaintiff to the banks, authorizing the 1st defendant to make him joint account holder. Therefore, We are of the opinion that the plaintiff is not entitled to the relief of rendition of accounts.

Point No.6:-

63.With regard to the petition filed by the appellant/plaintiff under Order 41 Rule 27 of CPC, it is the submission of the learned counsel for the appellant/plaintiff that the additional documents could be produced in the appeal to remove the lacuna in the case. But, it is the reply of the learned counsel for the 1st respondent/plaintiff that the plaintiff has not given sufficient reason for not filing the documents at the time of trial and the plaintiff cannot introduce the new facts at the time of appeal; as such, the petition filed by the plaintiff to receive additional documents shall be rejected.

64.In our considered opinion, it has to be seen whether the defendants have made out any case under Order 41 Rule 27 of CPC to receive the documents as additional evidence. In this regard, useful reference can be made to the decision of the Honourable Apex Court in the case of (Malayalam Plantations Limited vs. State of Kerala and another) reported in AIR 2011 Supreme Court 559 wherein it has been held by the Honourable Apex Court as follows:-

> "11.If any petition is filed under Order 41 Rule 27 in an appeal, it is incumbent on the part of the

appellate Court to consider at the time of hearing of the appeal on merits so as to find out whether the documents or evidence sought to be adduced have any relevance/bearing in the issues involved. Further, additional evidence could be adduced in one of the three situations namely (a) whether the trial court has illegally refused the evidence although it ought to have permitted (b) whether the evidence sought to be adduced by the party was not available despite the exercise of due diligence and (c) whether additional evidence was necessary in order to enable the Appellate Court to pronounce the judgment or any other substantial cause of similar nature. It is equally well settled that additional evidence cannot be permitted to be adduced so as to fill in the lacuna or to patch up the weak points in the case."

Applying the above decision of the Honourable Supreme Court to the case on hand, the claim of the plaintiff for reception of additional document will not fall in any of the parameters laid down by the Honourable Supreme Court. It is not the case of the plaintiff that she has filed the documents before the trial court but it was unlawfully rejected by the trial court. The reasons stated by the plaintiff for not producing the documents at the time of trial, are not satisfactory and as such, the same cannot be accepted. Further, it is not open to the plaintiff to make fresh allegations and call upon the other side to admit or deny such allegations at the stage of appeal, which is contrary to the provisions contained under Order 41 Rule 27 of CPC. Therefore, we are of the view that the plea of the plaintiff to grant leave to mark the additional documents at the appellate stage cannot be countenanced and it has to be rejected.

65.For the foregoing reasons, the appeal fails and the same is dismissed, confirming the judgment and decree passed by the Trial Court. The connected Miscellaneous Petition for reception of additional documents is also dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

ssv

To

1.The Additional District & Sessions Judge
(Fast Track Court-I),
Coimbatore.

2.The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.R.Bharath Kumar, Advocate SR.No.68434
+1cc to Mr.S.Saravanan, Advocate SR.No.68698

A.S.No.573 of 2011
and
C.M.P.No.5624 of 2017

CNR(CO)
GN(19/12/2017)