

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**RSA No.1719 of 2017 (O&M)
Date of Decision: 12.7.2017**

Raj Kaur and another

.....Appellants

Vs.

Sardool Singh (since deceased) through LRs and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Ashish Aggarwal, Sr. Advocate with
Mr. Kulwant Singh, Advocate
for the appellants.

RAMESHWAR SINGH MALIK J. (ORAL)

Unsuccessful defendants are in regular second appeal, against the concurrent findings of facts recorded by both the learned courts below, whereby suit for declaration with permanent injunction filed by the plaintiffs, was decreed by the learned trial court vide its impugned judgment and decree dated 24.12.2013 and the learned first appellate court, dismissed the first appeal of the defendants vide its impugned judgment and decree dated 28.11.2016, upholding the judgment and decree of the learned trial court.

Brief facts of the case, as recorded by the learned first appellate court in para 2 of its impugned judgment, are that as per the case of plaintiffs-respondents, they along with Man Singh-deceased and Kundan

Singh-deceased were real brothers and legal heirs of Labh Singh. Kundan Singh died several years back and Man Singh died on 29.08.2006, leaving behind his wife Bal Kaur and plaintiffs-respondents as the only legal heirs. It was the case that Man Singh-since deceased was co-owner in possession of 100 kanals-16 Marlas of land situated in the revenue estate of village Assandh, District Karnal. Out of this land, Man Singh had disposed of 52 kanals-4 Marlas of land being 1/4th share of agricultural land measuring 184 kanals-18 Marlas. After the death of Man Singh, his wife Bal Kaur-widow had inherited 45 kanals-15 Marlas of land. Mutation No. 12622 was entered and sanctioned in her favour on 21.09.2006, despite that Man Singh had executed a Will during his life time in favour of the beneficiaries. Bal Kaur had sold 45 kanals-15 Marlas of land vide registered sale deed No. 1670/1 dated 21.09.2006 as detailed in para 6(a) to (m) of the plaint in favour of defendants-appellants for sale consideration of Rs.31,46,000/-.

It was asserted that Bal Kaur did not execute sale deed in favour of defendants-appellants, nor she disposed of the sold land allegedly inherited by her vide mutation No. 12622 dated 21.09.2006, as she was very old lady, suffering from ailment and had no understanding. Due to age factor and being ill, she could not think of disposing of the property/land. She was not in a position to move from the bed. As per hospital record, she was got admitted in hospital on 23.09.2006 and expired on 28.09.2006. The mutation of inheritance in her favour was entered on 15.09.2006 with regard to estate of Man Singh and sanctioned on 21.09.2006. The sale deed No. 1670/1 was also dated 21.09.2006. The stamp papers for the purpose of execution of sale deed were purchased on 20.09.2006 and she was not the owner of the land on 20.09.2006. She died just few days after execution of the sale deed in

favour of defendants-appellants and all the circumstances clearly established that sale deed was the result of fraud by impersonation, misrepresentation of facts, illegal, null and void, arbitrary and not binding upon the rights of plaintiffs-respondents.

It was further pleaded that as per sale deed dated 21.09.2006; huge amount of Rs.31,46,000/- was shown to be paid to Bal Kaur by defendants-appellants, but there was nothing on record to show from where such a huge amount had come and gone or from where the said amount remained lying deposited, as Bal Kaur, as per record, had become seriously ill in hospital on 23.09.2016 and died on 28.09.2016. In these circumstances, Bal Kaur was never paid consideration money. Fictitious and forged entry was incorporated in the sale deed with regard to payment of sale consideration to Bal Kaur. The defendants-appellants had no movable or immovable property in their names earlier and had no source of income at all and hence, claim of huge amount of Rs. 31,46,000/- towards sale consideration money paid to Bal Kaur, did not arise at all. Man Singh had executed a Will in favour of beneficiaries during his life time and in the existence of that Will, Bal Kaur had no right title or interest to dispose of the property in dispute in favour of defendants-appellants in any manner by virtue of sale deed dated 21.09.2006. Thus, sale deed has no value in the eyes of law. In the sale deed dated 21.09.2006, vendor Bal Kaur-deceased had allegedly shown to have given possession to defendants-appellants regarding land in question. When the said land was joint and not partitioned, so, it was not possible to hand over or deliver the possession of land in favour of defendants-appellants by Bal Kaur. Thus, no actual physical and cultivation possession could be said to have been delivered to defendants-

appellants by Bal Kaur, in any manner, as alleged in the sale deed. Thus, sale deed had not been executed and registered in favour of defendants-appellants by Bal Kaur.

It was further pleaded that during the life time of Man Singh, plaintiffs-respondents used to cultivate the entire land including the land in question on account of their relationship with Man Singh-deceased and they were still in actual, physical and cultivation possession of entire land, without any interruption or interference. Hence, no possession of the alleged sold land had been delivered to defendants-appellants. Bal Kaur vendor-deceased had never signed or thumb marked any paper with regard to land in question regarding alleged sale deed. She never executed and got registered the sale deed in favour of appellants. No attesting witness was either joined from the family or from the family of the relations of Bal Kaur or of the plaintiff, at the time of execution and registration of sale deed. Price of land was fictitiously fixed as it was a prime location and costly land. Even if, Bal Kaur-vendor was presumed to be owner of the land, still there was no legal necessity for her to dispose of the land in favour of appellants in any manner through the sale deed dated 21.09.2006. It was asserted that plaintiffs-respondents came to know about the sale deed in the month of October-2006, when defendants-appellants asserted their rights over the land and tried to dispossess them (plaintiffs-respondents) forcibly from the suit land. On these sets of facts by pleading cause of action, the suit has been filed.

Having been put to notice, defendants appeared and filed their contesting written statement, raising more than one preliminary objections. Plaintiffs did not file any replication. On completion of pleadings of the parties, learned trial court framed the following issues:-

1. Whether sale deed No. 1670 dated 21.09.2006 and mutation No. 12622 dated 21.09.2006 are illegal, null and void and not binding upon the rights plaintiffs?OPP.
2. Whether suit of the plaintiffs is not maintainable in its present form ?OPD.
3. Whether plaintiffs have no cause of action and locus standi to file the present suit ?OPD.
4. Whether suit of the plaintiffs is barred by limitation? OPD.
5. Whether plaintiffs are estopped from filing the suit by their own act and conduct?OPD.
6. Relief.

Subsequently, during the proceedings of the suit; vide order dated 24.12.2013, two additional issues (1-A and 1-B) were struck down in the following terms:

1-A Whether the plaintiffs are owners in joint possession of the suit land as per para No.6 of the plaint being legal heirs of Mann Singh and Bal Kaur-since deceased on the grounds mentioned in the plaint?OPP.

1-B Whether the plaintiffs are entitled to decree for permanent injunction for restraining defendants from interfering in their possession over the suit land as per para No.6 of the plaint and alienating the same in any manner on the grounds mentioned in the plaint?OPP.

With a view to substantiate their respective stands taken in their pleadings, both the parties brought on record documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial court came to the conclusion that plaintiffs have duly proved their case by leading cogent and convincing evidence. Accordingly, their suit for declaration and permanent injunction was decreed vide impugned judgment and decree dated 24.12.2013, declaring sale deed 1670 dated 21.9.2006 (Ex.P3/Ex.D1) as

illegal, null and void and not binding upon the rights of the plaintiffs. Defendants were restrained from interfering in the possession of plaintiffs over the suit land and were also restrained from alienating the same in any manner. Feeling aggrieved, defendants filed their first appeal which also came to be dismissed by the learned first appellate court vide its impugned judgment and decree dated 28.11.2016, thereby upholding the abovesaid judgment and decree of the learned trial court. Hence this regular second appeal at the hands of unsuccessful defendants.

Heard learned senior counsel for the appellants.

Relevant pedigree table, as reproduced by the appellants in para 3 of CM No. 8658-C-2017, reads as under:-

Vajinder Singh			
I			
Labh Singh			
I			
I	I	I	I
Sardul Singh	Sisha Singh	Man Singh	Kundan Singh
(Plaintiff No.1)	(Plaintiff No.2)	(deceased)	(deceased)
I			
Bal Kaur (deceased)			
(widow)			

It is clear from the pedigree table that Smt. Bal Kaur was widow of late Sh. Man Singh. Plaintiff No.1-Sardool Singh and plaintiff No.2-Sisha Singh were brothers of late Sh. Man Singh. Sardul Singh also died and his legal representatives were brought on record during pendency of the suit. Late Sh. Man Singh died on 29.8.2006. Suit land owned by late Sh. Man Singh was inherited by his widow Smt. Bal Kaur, vide mutation No. 12622, which was entered and sanctioned in her favour on 21.9.2006. Since Smt. Bal Kaur was a very old lady, she was not keeping good health.

It has come on record that the stamp papers were purchased on

20.9.2006 and on the very next date, i.e. 21.9.2006, sale deed No. 1670 (Ex.P3) qua the suit land came to be allegedly executed by Smt. Bal Kaur in favour of defendants for a sale consideration of Rs. 31, 46,000/-. It has also come on record that Smt. Bal Kaur remained admitted in PGIMS, Rohtak, from 23.9.2006 to 28.9.2006 and she expired on the very next day after her discharge from the hospital. Thus, this undisputed chain of events, including the death of Man Singh on 29.8.2006, entry of mutation No. 12622 (Ex.P-13) on 21.9.2006, registration of sale deed No. 1670 on 21.9.2006 by Smt. Bal Kaur in favour of defendants for sale consideration of Rs. 31,46,000/-, her admission in PGIMS, Rohtak, on 23.9.2006, her discharge from hospital on 28.9.2006 and her death on the very next day of her discharge, i.e. 29.9.2006, are such material circumstances, which speak volumes against the defendants-appellants.

It is nobody's pleaded or argued case that either Smt. Bal Kaur had any legal necessity or she was in dire need of money which became her compulsive necessity for executing the sale deed dated 21.9.2006 in favour of the appellants. Where from appellants-defendants brought the huge amount of Rs. 31,46,000/-, and who, as a matter of fact, misappropriated this amount, has also remained a mystery. These glaring facts clearly pointed out an accusing finger towards the defendants-appellants, who were on a move to grab the property in question, rendering them dishonest litigants.

Such dishonest litigants, who tried to take undue advantage of their dominating position, with a view to exploit the miserably poor health condition of Smt. Bal Kaur, so as to grab the landed property in question, while proceeding on their common malafide intention, have no place in any court of law. Both the courts below have rendered very detailed, exhaustive

and informative judgments, duly supported by sound reasons, thus, no fault can be found with either of the impugned judgments, which deserve to be upheld.

There could not have been any better piece of evidence against the defendants-appellants than the statement of Balkar Singh, Lambardar, as PW5, who was none-else but attesting witness to the sale deed. His statement has been very closely examined by the learned trial court as well as first appellate court and referred in detail in both the impugned judgments. This witness specifically stated in his cross-examination that Smt. Bal Kaur was brought to the Tehsil Office in ambulance. She was lifted upstairs by 3/4 persons. She was not in her senses. She was not conscious at all regarding the surrounding circumstances.

This witness PW5 further deposed that Bal Kaur was taken to computer room along with two compounders and assistant doctors. He further stated that when he tried to talk to Smt. Bal Kaur, she was not capable of hearing and understanding anything. She was like a dead body. This witness also stated that he was asked by Sahab Singh-husband of defendant-appellant Raj Kaur, to become an attesting witness on the pretext that Smt. Bal Kaur was intending to execute Will and on that misrepresentation, PW5, Balkar Singh, Lambardar, put his thumb impressions on the instrument as an attesting witness, which turned to be the sale deed Ext P3.

This witness further gave a crystal clear narration of other sequence of events that efforts were made to make Smt. Bal Kaur sit on chair but she was unable to sit on the chair in the computer room. Consequently, assistant of the photographer had held Smt. Bal Kaur from her

neck for taking photographs. Statement of this witness PW5 speaks volumes about the ill health of Smt. Bal Kaur and unwarranted conduct of the defendants-appellants. Further, facts stated by this witness PW5 also find corroboration by a mere glance at the photographs of Smt. Bal Kaur on the last page of the sale deed Ex.P3.

It is so said because a person is seen supporting the neck of Smt. Bal Kaur by both of his hands, so as to facilitate the photographer to take her photographs. There could not have been anything more glaring and tacit connivance of the defendants with other persons, who were helping them to get this sale deed registered for extraneous considerations. Having said that, this Court feels no hesitation to conclude that the sale deed in question was nothing but a procured document based on misrepresentation and the same has been rightly declared null and void by both the learned courts below, because of which the impugned judgments and decrees deserve to be upheld.

It is very pertinent to note here that the learned trial court was in a much advantageous position to watch, examine and appreciate the demeanour of the material witnesses who deposed before it. In this view of the matter, concurrent and cogent findings recorded by both the learned courts below deserve to be upheld. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Jeet Mohinder Singh Vs. Harminder Singh Jassi, 1999 (9) SCC 386; Sunil Kumar Sambhudyal Gupta and others Vs. State of Maharashtra, 2010 (13) SCC 657; Puticherta Nagaraju Vs. State of Andhra Pradesh, 2006 (11) SCC 444 and Antar Singh Vs. State of Madhya Pradesh, 1979 (1) SCC 79.**

The argument raised by learned senior counsel for the

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appellants that total amount of sale consideration 31,46,000/- was paid to Smt Bal Kaur at the time of registration of sale deed has been found factually incorrect. Bare perusal of the sale deed would show that not even a single penny was paid to Smt. Bal Kaur before the Sub-Registrar at the time of registration of the sale deed. There is recital in the sale deed (Ex.P3) that Smt. Bal Kaur had already received an amount of Rs. 31,46,000/- and there would be no money transaction before the Sub-Registrar at the time of registration of the sale deed.

However, no time, date, month or year has been pointed in the sale deed; as to who paid how much amount to Smt. Bal Kaur and when and in whose presence. Under these circumstances, such a document cannot be said to be a valid document by any stretch of imagination. Since this sale deed (Ex.P3) was the basis of the entire case of the defendants-appellants, neither law nor equity has been found in their favour and they have been rightly non-suited by both the learned courts below, thus, the impugned judgments and decrees deserve to be upheld, for this reason also.

Much emphasis was laid by learned senior counsel for the appellants, raising a totally baseless issue that suit was not maintainable, because of the provisions of Order XXIII Rule 1 CPC. This aspect has been clearly dealt with by both the learned courts below. Relevant facts referred by the learned trial court in para 29 of the impugned judgment, read as under:-

“The English translation of the statement suffered by plaintiffs in the previous civil suit No. 373/06 on 14.12.2006 (Ex.P1/Ex.D5) is as under:-

“ Stated that we do not want to proceed with the present suit. We will file new suit and the original documents be kindly returned and the suit be consigned to the records”

The relevant portion of order dated 14.12.2006 Ex.P2/Ex06 is as:-

“ Keeping in view the joint statements of the plaintiffs, who have been duly identified by the counsel S. S.P.Sharma, the suit of the plaintiffs is hereby dismissed-as-withdrawn. Original documents of the plaintiffs be returned, if so desired.”

A bare reading of the abovesaid facts based on judicial record will leave no room for doubt that in the peculiar fact situation of the case in hand, provisions of law contained in Order XXIII Rule I CPCP will not be attracted. Similarly, following judgment relied upon by learned senior counsel for the appellants are of no help to the appellants, being distinguishable on facts.

Union of India Vs. M/s Chaturbhai M. Patel and Co.
1976 AIR (SC) 712 (SC)

Rajwant Kaur Matta Vs. Arora Feed Mills and another,
1991 (2) PLR 146 (P&H)

Raja Ram Vs. Ram Karan and others, 1991 (1) RRR 410
(P&H)

Budh Prakash Rastogi Vs Santosh Pal Dublish, 1998 (1)
RCR (civil) 121, (Allahabad High Court).

It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundara Rao and another Vs. State**

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of Tamil Nadu and others, 2002 (3) SCC 533, Union of India Vs. Amrit Lal Manchanda and others, 2004 (3) SCC 75, State of Orissa Vs. Md. Illiyas, 2006 (1) SCC 275 and State of Rajasthan VS. Ganeshi Lal, 2008 (2) SCC 533.

So far as the argument raised by learned senior counsel for the appellant on the plea of fraud, relying upon the judgment of the Hon'ble Supreme Court in **Chaturbhai's case** (supra), is concerned, the same has been duly considered but found wholly misplaced for the reasons recorded in the foregoing paragraphs. Keeping in view the peculiar facts and circumstances of the case, noticed hereinabove, this Court is of the considered view that in view of the quality of evidence available on record, present one has been found to be a case where the defendants-appellants had tried their level best to misuse the process of law, rendering themselves totally disentitled for any kind of relief at the hands of any court of law.

In fact, the appellants proceeded on such a calculated move that they kept everybody in dark, including the Sub-Registrar, about the health condition and state of mind of Smt. Bal Kaur. A bare look at the photograph of Smt. Bal Kaur on the last page of sale deed No. 1670, will leave no manner of doubt that Smt. Bal Kaur was seriously ill. She was unable to understand anything as rightly deposed by PW5. Persons can tell lie but circumstances will not. There is a voluminous documentary as well as oral evidence on the record which has clearly proved the case of plaintiffs and on the basis of evidence led by the plaintiffs, both the learned courts below rightly held the sale deed Ex.P3 to be null and void, therefore, both the impugned judgments and decrees passed by the learned courts below, including their concurrent findings of facts, deserve to be upheld.

Before arriving at a judicious conclusion, the learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. Cogent findings recorded by the learned first appellate court in para 8 to 10 of its impugned judgment, deserve to be noticed here, read as under:-

“It is conceded case of the parties that Man Singh son of Labh Singh owned 45 kanals-15 Marlas of land as detailed in the plaint. Said Man Singh died on 29.08.2006. Bal Kaur was widow of Man Singh. Ex.P13 is the mutation dated 15.09.2016 and sanctioned on 21.09.2006 bearing No. 12622 in favour of Bal Kaur. The foundation of the case of plaintiffs-respondents that some Will had been executed by Man Singh in favour of beneficiaries, stood traumatized, because such like plea remained on paper alone and the Will had not got the light of the day. This being so, the mutation No. 12622 dated 21.09.2006-Ex.P13 becomes an admitted phenomena. Once there is no denial to the fact that Bal Kaur was widow of Man Singh, then subsequent execution of mutation of inheritance Ex.P13 regarding estate of Man Singh, in her favour, has made her an absolute owner of 45 kanals-15 Marlas of land.

Ex.P3/Ex.D1 is the sale deed executed by Bal Kaur in favour of appellants with regard to 45 kanals-15 Marlas of land. The phraseology of the sale deed reflects in unequivocal terms that Bal Kaur has stated her ownership with regard to land sold on the basis Smt. Raj Kaur and another vs. Sardool Singh etc. of mutation No. 12622 and jamabandi of the year 2002-03-Ex.P12. Man Singh-husband of Bal Kaur had died on 29.08.2006. In no further loss of time, mutation of inheritance regarding estate of Man Singh was entered in favour of Bal Kaur on 15.09.2006 and sanctioned on 21.09.2006.

At that moment; Bal Kaur cannot be believed to be thinking at all to sell of her land as her husband had recently expired and the memories of her long association with Man Singh must have been quite fresh in her mind. The situation was not compatible for execution of sale deed by her. The mutation was entered and sanctioned in the presence of Raj Kaur's husband namely Sahab Singh. It is conceded stand that stamp papers were purchased one day before on 20.09.2006 and on the very next day (21.09.2016), the sale deed Ex.P3 got its light. The sole plank of the case of plaintiffs-respondents is that undue haste in getting the sale deed executed and registered shroud doubt on its veracity, while on the other hand the defendants-appellants have come up with the plea that Bal Kaur has executed the sale deed out of her free will.

In order to probe into this controversy; regard has to be made to the oral testimony of witnesses so examined. Balkar Singh, lamberdar-PW5 is one of the attesting witnesses of the sale deed. This witness has testified explicitly in her cross-examination that Bal Kaur widow of Man Singh was brought in ambulance. The ambulance stopped at the main gate of Tehsil Office. Bal Kaur was lifted upstairs by 3-4 persons. She was not in her senses. She was Smt. Raj Kaur and another vs. Sardool Singh etc. not conscious at all regarding the surrounding circumstances. Affirmatively, this witness has testified that Bal Kaur was taken in computer room along with two compounders and assistant Doctors. He has also testified affirmatively that he asked Bal Kaur as to whether she was capable of hearing and understanding anything, but she was like a dead body. He has also testified that she was asked by Sahab Singh-husband of Raj Kaur, to give his witness on document, on

the pretext that Bal Kaur is intending to execute a Will and on that representation; he thumb marked the instrument as an attesting witness. He has also given vivid and graphic narration of the other sequence of events, when he has testified affirmatively that efforts were made to make Bal Kaur sit on chair, but she was unable to sit on chair in the computer room and consequently, an assistant of the photographer had held Bal Kaur by neck for taking her photographs. The oral version of Balkar Singh leaves no manner of doubt that deteriorated health of Bal Kaur was impeding her considerably and even curtailing significantly, her little bit of surviving ability to act/react. She had no sense of understanding in order to take a rational judgment.”

Very old age, ill health and state of mind of Smt. Bal Kaur, coupled with other abovesaid attending circumstances, will make it clear that since the appellants exercised undue influence against Smt. Bal Kaur for getting the sale deed in question registered in their favour, it was for the appellants-defendants to prove that they did not exercise any undue influence against Smt. Bal Kaur, particularly when the plaintiffs have duly discharged their initial onus, by leading cogent and convincing evidence, especially by producing attesting witness of the sale deed namely Balkar Singh, Lambardar, as PW5. However, defendants-appellants miserably failed to prove that they did not exercise any undue influence against Smt. Bal Kaur and they were bound to fail, for this reason also.

The view that has been taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court:-

Mst. Kharbuja Kuer Vs. Jangbahadur Rai and others,

1963 AIR (SC) 1203 (SC)

Krishna Mohan Kul alia Nani Charan Kul and another
Vs. Pratima Maity and others, 2004 (9) SCC 468 (SC)

Joseph Johan Peter Sandy Vs. Veronica Thomas
Rajkumar and another, 2013 (3) SCC 801 (SC)

Chand Kaur (died) through Lrs VS. Swaran Singh, 1997
(4) RCR (civil) 390 (P&H)

Sujan Kaur Vs. Chand Singh, 2003 (3) RCR (civil) 660
(P&H)

Subhash Chander and others Vs. M/s Active Promoters
Pvt. Ltd. 2015 (1) RCR (civil) 62

It is pertinent to note here that PW5, attesting witness to the sale deed (Ex.P3), also deposed before the Court that Smt. Bal Kaur was accompanied by Sahab Singh, Raj Kaur, Rana Singh and her other relatives. This material fact has also gone undisputed throughout that on the relevant point of time when the sale deed Ex.P3 was allegedly executed by Smt. Bal Kaur 21.9.2006 in favour of the defendants-appellants, she was in the company of defendants who were not strangers but her relatives. In fact, Smt. Raj Kaur-appellant herself stated, while appearing as DW5, that Smt. Bal Kaur was real sister of her grandfather Sh. Gurbaksh Singh. She also stated that there was no child out of the wedlock of Man Singh and Bal Kaur.

Thus, it was very much clear that Smt. Bal Kaur was in a fiduciary relationship with the defendants-appellants, and it were the appellants-defendants who were in a dominating position. In such a situation, onus would always be on the defendants-appellants to dispel the suspicious circumstances, surrounding the sale deed in question that they did not exercise any undue influence on Smt. Bal Kaur and the sale transaction

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was a genuine one. However, in the present case, appellants have miserably failed to lead any such evidence and that too, for no good reasons.

In this regard, relevant observations made by the Hon'ble Supreme Court in para 12 of its judgment in **Pratima Maity's** case (supra), read as under:-

“.....When fraud, mis-representation or undue influence is alleged by a party in a suit, normally, the burden is on him to prove such fraud, undue influence or misrepresentation. But, when a person is in a fiduciary relationship with another and the latter is in a position of active confidence the burden of proving the absence of fraud, misrepresentation or undue influence is upon the person in the dominating position, he has to prove that there was fair play in the transaction and that the apparent is the real, in other words, that the transaction is genuine and bona fide. In such a case the burden of proving the good faith of the transaction is thrown upon the dominant party, that is to say, the party who is in a position of active confidence. A person standing in a fiduciary relation to another has a duty to protect the interest given to his care and the Court watches with zealously all transactions between such persons so that the protector may not use his influence or the confidence to his advantage. When the party complaining shows such relation, the law presumes everything against the transaction and the onus is cast upon the person holding the position of confidence or trust to show that the transaction is perfectly fair and reasonable, that no advantage has been taken of his position. This principle has been engrained in Section 111 of the Indian Evidence Act, 1872 (in short the 'Evidence Act'). The rule here laid down is in accordance with a principle long acknowledged and administered in Courts of Equity in

England and America. This principle is that he who bargains in a matter of advantage with a person who places a confidence in him is bound to show that a proper and reasonable use has been made of that confidence. The transaction is not necessarily void ipso facto, nor is it necessary for those who impeach it to establish that there has been fraud or imposition, but the burden of establishing its perfect fairness, adequacy and equity is cast upon the person in whom the confidence has been reposed. The rule applies equally to all persons standing in confidential relations with each other. Agents, trustees, executors, administrators, auctioneers, and others have been held to fall within the rule. The Section requires that the party on whom the burden of proof is laid should have been in a position of active confidence. Where fraud is alleged, the rule has been clearly established in England that in the case of a stranger equity will not set aside a voluntary deed or donation, however, improvident it may be, if it be free from the imputation of fraud, surprise, undue influence and spontaneously executed or made by the donor with his eyes open. Where an active, confidential, or fiduciary relation exists between the parties, there the burden of proof is on the donee or those claiming through him. It has further been laid down that where a person gains a great advantage over another by a voluntary instrument, the burden of proof is thrown upon the person receiving the benefit and he is under the necessity of showing that the transaction is fair and honest.”

Similarly, the Hon'ble Supreme Court further laid down the law in para 13 to 17 of its judgment in **Pratima Maity's** case (supra), which can be gainfully followed in the present case, and the same reads as under:-

“In judging of the validity of transactions between

persons standing in a confidential relation to each other, it is very material to see whether the person conferring a benefit on the other had competent and independent advice. The age or capacity of the person conferring the benefit and the nature of the benefit are of very great importance in such cases. It is always obligatory for the donor/beneficiary under a document to prove due execution of the document in accordance with law, even de hors the reasonableness or otherwise of the transaction, to avail of the benefit or claim rights under the document irrespective of the fact whether such party is the defendant or plaintiff before Court.

It is now well established that a Court of Equity, when a person obtains any benefit from another imposes upon the grantee the burden, if he wishes to maintain the contract or gift, of proving that in fact he exerted no influence for the purpose of obtaining it. The proposition is very clearly stated in Ashburner's Principles of Equity, 2nd Ed., p. 229, thus :

"When the relation between the donor and donee at or shortly before the execution of the gift has been such as to raise a presumption that the donee had influence over the donor, the Court sets aside the gift unless the donee can prove that the gift was the result of a free exercise of the donor's will."

The corollary to that principle is contained in Clause (3) of Section 16 of the Indian Contract Act, 1872 (in short 'Contract Act').

*At this juncture, a classic proposition of law by this Court in **Mst. Kharbujia Kuer v. Jang Bahadur Rai and Ors.**, AIR (1963) SC 1203 needs to be noted :*

'It is, therefore, manifest that the rule evolved for the protection of pardahnashin ladies not be

confused with other doctrines, such as fraud, duress and actual undue influence, which apply to all persons whether they be pardahnashin ladies or not".

*The logic is equally applicable to an old, illiterate, ailing person who is unable to comprehend the nature of the document or the contents thereof. It should be established that there was not mere physical act of the executant involved, but the mental act. Observations of this Court, though in the context of pardahnashin lady in **Mst. Kharduja Kuer v. Jang Bahadur Rai and Ors., AIR (1963) SC 1203** are logically applicable to the case of the old, invalid, infirm (physically and mentally) and illiterate persons.*

In the abovesaid judgment of **Pratima Maity's case** (supra), the Hon'ble Supreme Court reiterated its earlier view taken in **Jungbahadur Rai's case** (supra). Again, the Hon'ble Supreme Court in its later judgment in **Joseph Johan Peter Sandy's case** (supra), held on similar lines to the effect that if the transaction appears to be unconscionable, then the burden of proving that the contract was not affected by undue influence lies upon the person who is in a position to dominate the Will of the other.

It was further held that while dealing with the case of undue influence, the court must consider two things to start with; i) are the relations between the donor and the donee such that the donee is in a position to dominate the Will of the donor, and (ii) has the donee used that position to obtain an unfair advantage over the donor. Since the appellants have miserably failed to show that they did not exercise any undue influence on Smt. Bal Kaur for getting undue advantage of her old age, ill health and state of mind, they had no case either on facts or in law. Under these

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circumstances, concurrent findings of facts recorded by both the learned courts below deserve to be upheld.

During the course of hearing, learned senior counsel for the appellants failed to point out any patent illegality or perversity in either of the impugned judgments passed by the learned courts below. He also could not refer to any question of law much less substantial question of law, which is sine qua non for entertaining a regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. Purshottam Tiwari, 2001 (3) SCC 179.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

12.7.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable:</i>	<i>Yes</i>