

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.2331 of 2004

Date of Decision:13.09.2019

Kultar Singh

...Appellant

versus

Jagtar Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Kanwaljit Singh, Senior Advocate, with
Mr. Abhishek Bajaj, Advocate,
for the appellant.

Mr. S.D.Sharma, Senior Advocate, with
Mr. Ved Priya Malik, Advocate,
for the respondents.

Amol Rattan Singh, J.

This second appeal has been filed by Kultar Singh, i.e. the plaintiff in Civil Suit no.53/28.2.96, instituted before the learned Civil Judge (Junior Division), Phagwara, that suit having been dismissed on 28.04.2001, with the first appeal filed against that judgment and decree also having been dismissed by the learned Second Additional District Judge, Kapurthala, on 24.03.2004. The defendants in the suit, i.e. the present respondents, are all brothers and sisters of the appellant-plaintiff.

2. The bone of contention between the parties is a double storeyed house (stated in this court to be of an area of about 200 sq. yards), previously owned by the father of the parties (Mehtab Singh) who died on 07.02.1996.

Thus, vide his suit, the appellant herein had sought a decree of permanent injunction restraining/prohibiting the first defendant (respondent no.1 herein) from altering any part of the suit property in any kind and form,

and from alienating and transferring it in any manner, including particularly the Western side of the house, with him further seeking a declaration to the effect that the “alleged sale deed” being relied upon by the said respondent-defendant, dated 11.01.1996 (registered on 12.01.1996), claimed by the said respondent to have been executed by their father in his favour qua such Western side of the house, was a deed that was 'illegal, null and void' and therefore not affecting the rights of the plaintiff and defendants no.2 and 3 (respondents no.2 and 3 herein), i.e. the other two brothers of the appellant and the first respondent, who as per the appellant-plaintiff, were all equally entitled, alongwith respondent-defendant no.1, to the entire property jointly and severally, which otherwise was stated (in the plaint) to be in the joint possession of the appellant and respondent no.1, (with respondent no.2 stated to be posted in Srinagar (J&K) as a teacher, and with respondent no.3 residing in Thailand). The remaining respondents-defendants are the sisters of the other parties, to the suit, with the sisters not having been given any portion of the house by their father, who, as per the plaintiff, had executed a Will dated 22.01.1996 in favour of all his sons, as regards the suit property, leaving it in equal shares to all three of them.

3. The appellant-plaintiff further contended that the alleged sale deed dated 11/12.01.1996 was actually never executed by Mehtab Singh and was therefore the result of a fraud perpetuated, with Mehtab Singh having been impersonated by some other person (at the instance of respondent-defendant no.1).

It was further contended that actually there was no sale consideration also passed by the said respondent to Mehtab Singh, i.e. the father of the parties.

4. The appellant-plaintiff further contends that he as well as his brothers, i.e. respondents no.1 to 3 herein, used to render service to Mahtab Singh, with his sisters (defendants no.4 to 7 in the suit) having been married since long, with them living with their respective families; and that their father died at the age of about 90-91 years, with him being afflicted with chronic arthritis due to which he was bed ridden for a long time before his death and was consequently unable to move.

He was also stated to be under the treatment of one Dr. K.K.Grover of Phagwara, and that in fact on 22.01.1996, in a sound disposing mind, he had executed the said Will in favour of the appellant-plaintiff and his other sons (respondent-defendants no.1 to 3), qua the suit property as also other moveable properties owned by him, such as goods and cash etc., thus bequeathing to them all his property in equal shares.

As per the appellant, the sisters, i.e. respondent-defendants no.4 to 7, had no interest or right in the house and as a matter of fact, he and the first respondent-defendant were in joint possession of it even after the death of their father, with respondent no.2 (Rishi Raj Singh) posted at that time in Jammu & Kashmir and respondent-defendant no.3 (Charanjit Singh) residing in Thailand.

In fact, as per the appellant-plaintiff, they could not be joined as plaintiffs on account of the fact that they were not living in Phagwara.

5. It was further contended in the plaint that “since a few days” respondent no.1 herein had started claiming that he is the owner of the western side of the house on the basis of the aforementioned sale deed by which their father had allegedly sold that portion of the house to him for a sum of Rs.92,000/-.

6. The appellant-plaintiffs' contention on that was that, firstly, Mehtab Singh never appeared before the Sub-Registrar for getting the sale deed executed or registered; that he was bed ridden and therefore not in a position to move out of his house; that the alleged signatures of Mehtab Singh on the sale deed were not actually his own signatures and were forged, with in fact some other person produced as Mehtab Singh for execution and registration of the deed; that the sale deed was actually without any consideration of Rs.92,000/- as the sum was never actually paid by respondent no.1 to their father; and lastly, that there was absolutely no reason or occasion for Mehtab Singh to sell off any portion of the house to respondent no.1, in his bed ridden condition.

7. The said respondent allegedly being also in negotiations to sell of the said portion of the house, the suit came to be thus instituted seeking a decree of permanent injunction and a declaration, as already stated earlier hereinabove.

8. Notice having been issued by the trial court, the first respondent herein took the stand as already noticed earlier hereinabove, with regard to the sale deed having been executed by Mehtab Singh in his favour, further stating that in fact neither the appellant-plaintiff, nor respondent-defendants no.2 to 7, ever rendered services to their father, with the appellant-plaintiff in fact residing separately from his father for a long time.

Similarly, respondents no.2 to 7 were also contended to have been residing separately and it was only he (respondent no.1 Jagtar Singh) who used to render services to Mehtab Singh.

Mehtab Singh being afflicted with chronic arthritis and being bed ridden continuously before his death were also contentions of the plaintiff that

were denied by respondent no.1, who therefore also denied that he was under the “medical superintendence” of Dr. K.K. Grover.

9. Further, in the written statement, it was contended that Mehtab Singh was of a sound disposing mind, he being looked after by defendant no.1.

He however admitted that Mehtab Singh had executed a Will during his life time, in such sound disposing mind in favour of the plaintiff and defendants no.1 to 3, which, as per him, was however only qua the remaining property as was not sold by Mehtab Singh vide the registered sale deed dated 11/12.01.1996.

Hence, it was contended that as regards the portion that was sold to him, he (defendant no.1) was the absolute owner thereof, with the said registered deed being binding on the appellant-plaintiff as also all other legal heirs of Mehtab Singh.

10. A replication having been filed to the aforesaid written statement, reiterating the contents of the plaint, the following issues were framed by the learned trial court:-

- “1. Whether the plaintiff is entitled to the decree for permanent injunction as prayed for? OPP
2. Whether the sale deed dated 12.01.96 is illegal and void and ineffective? OPP
3. Whether the plaintiff is entitled to decree for declaration as prayed for? OPP
4. Whether the plaintiff has no locus standi to file the present suit? OPD
5. Whether the plaintiff has no cause of action to file the present suit? OPD
6. Whether the suit is not maintainable? OPD
7. Whether the suit is not properly valued for the purposes of court fees and jurisdiction? OPD

8. Relief.”

11. To prove their respective cases, the appellant and respondent no.1 examined the following witnesses before the learned trial court:-

P.B. Sharma	PW1
Shri Ashok Bains	PW2
Shri Ram Singh	PW3
P.S. Ahuja (hand-writing expert)	PW4
Raj Kumar	PW5
Sunil Kumar	PW6
Kiran Kumar Grover	PW7
Kultar Singh (plaintiff)	PW8
xxxxxx	xxxxxx
Jagjit Rai, Deed-Writer	DW1
Bihari Lal (attesting witness)	DW2
Jagtar Singh (defendant no.1)	DW3

Though the documentary evidence led by the parties has not been detailed in the judgment of the trial court, nor even before this court by counsel for the parties (except for specific documents), a perusal of the judgment of that court shows that various documents were referred to, as had been exhibited before it.

12. As regards the first three issues (all decided together), the trial court found that PW4, P.S. Ahuja, was a Finger Print and Hand Writing Expert who testified with regard to the signatures of Mehtab Singh on the sale deed set up by defendant no.1. He stated that he had compared them with the admitted signatures of Mehtab Singh from the Will executed by him as also with the record summoned from the Punjab National Bank (i.e. his undisputed

signatures).

As per the said witness, the signatures on the sale deed were not in the writing of Mehtab Singh, with him having testified in support of his report (Ex.PW4/A) and photographs/negatives (Exs.PW4/B to PW4/M).

13. That court next recorded a finding that PW5 had deposed that he had known Mehtab Singh, who was living in the house in dispute and was suffering for sometime, and since December 1995 he was unable to walk, though he was mentally alert and fit.

This witness was also found to have testified that he had seen both, the appellant-plaintiff and respondent-defendant no.1, “opening the door of the house in dispute”.

14. The next witness, PW6 Sunil Kumar, was found to have deposed qua the Will executed by Mehtab Singh in favour of his sons, to the effect that Mehtab Singh had admitted the contents thereof to be true and had put his signatures on the Will in his presence and in the presence of other witnesses, i.e. Onkar Singh and Dr.K.K.Grover, with all three witnesses having appended their signatures on the documents also in the presence of Mehtab Singh.

Similarly, PW7 Dr. K.K. Grover was also found to have proved the Will Ex.PW7/1.

15. As regards the appellant-plaintiff himself, the trial court recorded that he proved the site plan of the 'suit house', Ex.PW8/1, further deposing that he and his brothers and sisters all used to serve their father, even though the sisters had been married long since and were living in their own matrimonial homes.

Other than that he was found to have testified as per the contents of the plaint.

16. As regards evidence of the respondent-defendant no.1, that court found that DW1, Jagjit Rai, had deposed that he had typed “the sale deed dated 10.1.96” (as stated in paragraph 13 of that courts' judgment), at the instance of Mehtab Singh, with one Mehnga Ram and Bihari Lal being the attesting witnesses thereto.

This witness was also found to have testified that after typing the deed he had read over the contents thereof to the parties and to the witnesses, with them all having thereafter appended their signatures to the document.

He also stated that he had made an entry in his register to that effect and that the original sale deed as had been exhibited before the court as Ex.D1, was the one that he had typed out and had made an entry to that effect in his register, such entry having been made on 21.01.1996, at Sr. no.21.

The photograph of the entry in the register was stated by him to be Ex.D2.

17. The aforementioned Bihari Lal was found to have testified as DW2, essentially to the same effect, further stating that Mehtab Singh, after admitting and acknowledging the deed had signed it in the Punjabi (*Gurmukhi*) script in the presence of both the witnesses as also in the presence of respondent-defendant no.1 Jagtar Singh, who had also signed the deed, Ex.D1, scribed on 11.01.1996.

This witness was further found to have testified that Rs.92,000/- were paid by Jagtar Singh to his father Mehtab Singh in the presence of this witness on the date that the deed was executed; and that on 12.01.1996 (the next day) they had appeared before the Sub-Registrar, Phagwara, who had read over the contents of the sale deed to Mehtab Singh, Jagtar Singh and the witnesses, and had further enquired from Mehtab Singh as to whether he had

received the consideration amount of Rs.92,000/-, which Mehtab Singh admitted to having received.

Thereafter, the sale deed is said to have been stamped by the Sub-Registrar, with the parties and witnesses thereto also having signed the endorsement in the presence of the Sub-Registrar, Phagwara, including DW2 himself.

Lastly, this witness was also found to have testified that possession of the house was given to Jagtar Singh and that the sale deed could not be registered on 11.01.1996 as the Naib Tehsildar “had gone somewhere for sometime” and consequently it was 'chosen to be registered' the next day.

18. Respondent-defendant no.1 was found by the trial court to have testified as DW3, in terms of his stand in the written statement, with him also giving the description of the portion sold to be 814 sq. ft. consisting of 3 rooms, a kitchen, a bathroom and a courtyard.

19. Upon considering the aforesaid evidence and the arguments raised before the trial court, it eventually held that the appellant herein (plaintiff) was not entitled to the decree of permanent injunction sought by him.

To arrive at that conclusion, that court gave its reasoning as follows:-

- i) That reliance could not be placed on the testimony of the hand writing expert (PW4) because the *Naksha* (site plan) from which he had compared the signatures of Mehtab Singh with his standard signatures, was actually a plan that was not a part of the sale deed dated 11.01.1996, as it was not on the judicial file, which fact was admitted by PW4.

It was further found that the witness had not mentioned his qualifications in his report, Ex.PW4/A.

- ii) That there was no order of the court for comparison of the

disputed signatures with the standard signatures of Mehtab Singh; and therefore an adverse inference was to be drawn that the comparison was not made with “the original bank draft” so as to compare the English and Punjabi (*Gurmukhi*) signatures.

Hence, holding that no permission having been taken from the court for taking photographs of the signatures and with it not even verified from the court as to which were the disputed signatures and admitted signatures of Mehtab Singh, and PW4 having acted on the information given by counsel for the parties to him, behind the back of the opposite counsel, his report and testimony could not be accepted.

- iii) That though undoubtedly the Will, Ex.PW7/1, was admitted by even “counsel for the defendant”, however his stand was that the Will was only qua property excluding the property sold vide the registered sale deed dated 11/12.01.1996.
- iv) That the said sale deed stood fully proved by the defendant, who examined its deed-writer, with an entry thereof also made in his register to that effect (Ex.D1). The said witness also proved the entry as Ex.D2.

One of the attesting witnesses to the sale deed, i.e. DW2 Bihari Lal, also testified to its authenticity, further stating that Rs.92,000/- was paid by Jagtar Singh in his presence on the same date that the deed was executed, with the endorsement made in the register, Ex.D2, also proved by this witness.

- v) That defendant Jagtar Singh had also testified in terms of his stand in the written statement; and further, that the sale deed proved by him was a registered document and therefore in terms of Section 60 of the Registration Act, it could be construed to be a substantive piece of evidence for which no further proof was required even in terms of the Evidence Act.
- vi) Section 59 of the Registration Act was also referred to by

the trial court, to hold that correctness would be attached to the endorsement made by the Registrar on a mortgage deed and where a mortgagor admitted execution of a sale deed before the Registrar, it could not thereafter be argued that he was ignorant of the nature of the transaction.

- vii) Reliance was placed by that court on a judgment of the Bombay High Court cited as 1986 (1) Bombay CR 50 (56).

The judgments cited on behalf of the plaintiff in 1998 (2) CCC 366 (Allahabad) Hakimuddin v. Mohammad Anis, 1998 (1) CCC 251 (P&H), Chand Kaur (died) through LRs v. Swaran Singh, 1994 (2) CCC 695 (Kerala) Hathika v. Padmanabhan, were held to be not applicable to the facts of the case, by the trial court.

- viii) The argument that Mehtab Singh was a sick person who could not travel and go to the office of the Sub-Registrar to register the sale deed, was rejected on the ground that no medical certificate with regard to Mehtab Singhs' condition had been placed on record, and with it having already come in evidence that he was mentally alert and of a sound disposing mind, he could have executed and got registered the sale deed on 11/12.01.1996.
- ix) That the Will executed by Mehtab Singh was in fact in favour of all three of his sons only qua the property as was not subject matter of the aforesaid sale deed.

20. Holding as above, the suit of the appellant-plaintiff was dismissed by that court.

21. The said judgment and decree having been challenged by the appellant herein by way of a first appeal, the learned Additional District Judge, Kapurthala, after noticing the facts as per the pleadings of the parties and the evidence led before the trial court, as also the arguments addressed before her, came to the same conclusion as had the trial court.

That court also held that the trial court had correctly observed that

reliance could not be placed on the statement of PW4 as the site plan aforesaid was not a part of the disputed sale deed and that the signatures had been taken from “outside the file”, with the site plan from which the signatures had been taken, not placed on the judicial file.

[It is to be noticed at this stage itself that the aforesaid finding would in fact amount to the lower appellate court rejecting an argument raised on behalf of the respondent-defendant, who actually would seem to have accepted that the site plan was actually very much a part of the sale deed, his argument however being that the site plan not having been challenged, the contention raised for the plaintiff that the signatures on it were not those of Mehtab Singh, was not a contention that could be raised, it being beyond pleadings. Thus, the site plan itself would seem to have been accepted as 'correct' on behalf of the defendant, as per the arguments raised on his behalf.

Even so, as would be seen further ahead in this judgment, that may not have a bearing on the conclusion reached by this court, which is for a different reason.]

However, what has been held on that aspect by the learned lower appellate court, is that as PW4 had admitted in his cross-examination that as the original document mentioned in his report was not on the record, the report could not be accepted, it not being qua any document that was a part of the judicial file.

Yet further, it was held by that court that comparison of hand writing is not a perfect science and that deviations in signatures can arise due to natural variations and various other causes.

Consequently, the testimony of PW4, to the effect that the signatures on the site plan (as were compared by him with the standard

signatures of Mehtab Singh), were not found to be those of Mehtab Singh, was held to be a testimony that could not be relied upon.

22. As regards the contention of the plaintiff that the sale deed did not find any mention in the (subsequent) Will of Mehtab Singh, the learned Additional District Judge is not seen to have specifically dealt with that issue though the contention in that regard has been noticed in paragraph 17 of the judgment.

23. Eventually that court also went on to hold that with the sale deed, Ex.D1, having been duly proved by the marginal witnesses to it, including the endorsement made before the Sub-Registrar (by such witnesses), with the passing of consideration also testified to by (one of) them, it being a registered document there would be no reason to not accept it as a genuine one, especially as nothing had been brought on record by the plaintiff to show that the sale deed was a forged one, with DW2, Bihari Lal, also having withstood cross-examination on every aspect of execution of the sale deed in the presence of Mehtab Singh.

It was also held that official acts are presumed to have been “done properly” and consequently, a mere statement to the effect that the executant of the sale deed was not present before the Sub-Registrar, would not be sufficient ground to challenge the registration process.

In this context, the following judgments were referred to by that court:-

- a) **S.G. Ramalakshi v. Nellai Murasu Private Ltd. rep. By its Managing Director, A.S. Adithiyan 2000 (3) CCC 394;** and
- b) **Kartar Kaur v. Bhagwan Kaur 1993 CCC 171.**

24. The next reason given to dismiss the first appeal of the plaintiff,

was that no medical evidence was brought on record to show that Mehtab Singh was bed ridden and that he was not in a position to go to the office of the Sub-Registrar to execute the sale deed, with the plaintiff himself having admitted that their father was mentally alert and was of a sound and disposing mind, with PW5 Raj Kumar having “washed out his statement” by his admission in cross-examination, stating that he had only heard in the neighbourhood that Mehtab Singh was unable to walk since 1995, his testimony therefore being only hearsay evidence;

As regards PW7 K.K. Grover, who was “alleged to be the doctor treating Mehtab Singh”, he too had not produced any medical certificate or any record of his clinic to show that he ever treated Mehtab Singh, and therefore his testimony could not be accepted (as to the medical condition of Mehtab Singh).

25. The plaintiffs' contention that Mehtab Singh was not in need of money and therefore there was no occasion for him to execute the sale deed, was also held to be an unacceptable plea, as the owner of the property had a right to dispose it of at any time and consequently, the trial courts' conclusion that Mehtab Singh had already executed the sale deed on 11.01.1996, was not a finding to be disturbed.

26. Hence, as regards the primary 3 issues, the first appellate court found no reason to interfere with the judgment of the trial court.

The next 3 issues, on *locus*, there being no cause of action and the suit not being maintainable, were decided in favour of the plaintiff, for the same reasons as given by the trial court, to the effect that they were not pressed at the time of arguments.

The issue with regard to proper valuation of court fee was also similarly decided in favour of the plaintiff.

27. On the reasoning given as regards the main issues, the first appeal of the appellant-plaintiff was dismissed.

28. Before this court, the following questions of law have been framed by learned counsel for the appellant in the grounds of appeal:-

- “i) Whether the alleged sale deed is hit by Section 54 of the Transfer of Property Act?
- ii) Whether the registration of a sale deed can be rebutted by producing evidence and such registered sale deed is a rebuttable presumption as per Section 60 (2) of the Registration Act.
- iii) Whether the expert evidence gets precedent (*sic*)?
- iv) Whether the registered sale deed could be upset by the oral evidence coupled with the latter Will of the testator/vendor.
- v) Whether the sale deed without prove (*sic*) of consideration can be said to be bad, illegal?
- vi) Whether the signatures on the sale deed having been looked by the handwriting and finger expert with the standard signatures of the vendor after taking due permission of the court are to be given due consideration and authenticity to the statement of the handwriting expert?”

28-A. However, it is seen that, as a matter of fact, question (i) and (v) are effectively the same question and similarly, question (ii) and (iv) are also eventually a single question of law, as are question nos. (iii) and (vi).

Consequently, based on the arguments raised before this court, the following three questions of law are actually found to be arising in the present petition:-

- (i) Whether the sale deed set up by respondent-defendant no. 1 could be held to be a sale in which actually sale consideration was proved to

have been duly passed, and if not, whether it can be held to be a valid sale deed, in terms of Section 54 of the Transfer of Property Act, 1882?

(ii) Whether the presumption raised in Section 60 of the Registration Act, 1908, qua a registered document, is a rebuttal presumption as regards the validity of the instrument registered, or not; and even if the registration is proved, has it necessarily to be accepted as a sale validly made, and one by Mehtab Singh himself, and one executed of a free mind, with it not finding mention in his subsequent Will?

(iii) Whether the report of the hand writing expert, PW-4, to the effect that the signatures on the site plan annexed with the sale deed did not match the standard signatures of the executant thereof, is evidence that has been illegally rejected by the learned courts below or not?

29. Mr. Kanwaljit Singh, learned senior counsel appearing for the appellant, presented the following grounds to challenge the judgments of the learned courts below:-

- i) That the stamp papers purchased for execution of the sale deed are dated 10.01.1996, with the sale deed alleged to have been drafted and written in the Tehsil Complex on 11.01.1996 and thereafter registered before the competent authority on 12.01.1996; yet, the stamp vendor from whom it was purchased, to prove that it was actually Mehtab Singh who purchased the stamp papers, was not examined; and though the deed writer, DW1, testified that the sale deed was typed on 10.01.1996, but in cross-examination he admitted that no consideration was paid in his presence and that he had not purchased the stamp papers, nor was he aware of who had purchased them, with him also not having any knowledge of the signatures of the parties;
- ii) That DW2 Bihari Lal, was a property dealer and was the attesting witness to the sale deed and had testified to the

effect that Mehtab Singh had called him for the execution thereof; however (as per learned senior counsel), if Mehtab Singh were to sell the property to his son, there would be no need to call a property dealer;

- iii) He further submitted that as regards this witness having taken Mehtab Singh on his scooter on 11.01.1996 to the Tehsil Complex to execute the document, it would be strange that stamp papers were purchased by Mehtab Singh on 10.01.1996, as testified to by DW1. Thus, there was contradictory evidence as to who took him to the stamp vendor on 10.01.1996 from where he purchased the stamp papers, with him obviously not able to go himself at the age of 92 years.

Thus, the contention of Mr. Kanwaljit Singh on that aspect is that therefore, as per Bihari Lals' testimony, Mehtab Singh would be shown to have gone to the Tehsil Complex first on 10.01.1996 to purchase the stamp papers, then on 11.01.1996 to execute the deed and thereafter on 12.01.1996 to get it registered, at the age of 92, with nothing shown as to who took him to the Tehsil Complex on January 10, with even respondent Jagtar Singh, as DW3, having stated that he (Jagtar Singh) had not purchased the stamp papers.

- iv) As regards payment of consideration, learned senior counsel submitted that in cross-examination the said respondent had admitted that he did not himself have the entire money and only Rs.20,000/- was 'brought' by him, with him not able to explain the source from whom he had obtained the remaining Rs.72,000/- of sale consideration, as also the money for purchase of the stamp papers etc. Though he had stated that he had got Rs.80,000/- from his wives' brother, neither the wife nor the brother were examined to prove the same, with no bank statements of theirs also produced.

He further submitted that even in his cross-

examination, the respondent-defendant admitted that Mehtab Singh used to give his own money for the purchase of medicines, further stating that he could not give any reason as to why the consideration was not paid in the office of the Sub-Registrar.

Thus, the contention is that consideration not having been actually passed between the vendor and the vendee, it was not a valid sale in any case, thereby also proving that it was a fabricated document.

- v) He next submitted that respondent Jagtar Singh never actually denied, and in fact admitted, that there was a site plan attached to the sale deed and therefore, the learned courts below have wholly erred in rejecting the testimony of PW4, i.e. the hand writing and finger print expert, simply on the ground that the comparison was done from a site plan that was not a part of the judicial file.

On the other hand, as per learned senior counsel, the signatures compared from the site plan, with the standard signatures of Mehtab Singh from his bank account as also from the Will admittedly executed by him, were found to be differing from each other by PW4, and consequently the appellant-plaintiff had duly proved that the sale deed was a fabricated/fraudulently executed one.

In this context, he pointed to the photocopy of a site plan from the record of evidence led before the learned trial court, which is seen to be a marked document fixed at a place prior to the first exhibit relied upon by defendant no.1, i.e. the sale deed, Ex.D1.

He then drew attention to the signatures seen on that document as also on the admitted Will, Ex.PW7/1, to submit that the signatures were very obviously different even to the naked eye, i.e. both, the signatures in English as also those in *Gurmukhi*.

In that context, learned senior counsel last submitted that it could not be held that the site plan was not the one

presented before the Registrars' office, because it had been produced through PW3, i.e. one Ram Singh, a Clerk in the Tehsil Office, Phagwara;

- vi) Mr. Singhs' next contention was that PW5 Raj Kumar who was a neighbour of Mehtab Singh, as also PW6 Sunil Kumar (an attesting witness of the admitted Will), and Dr. K.K.Grover, had testified to the effect that Mehtab Singh was unable to walk at the time of execution of the Will as he was "lying on his bed".

He submitted that Dr. Grover was an independent person, 'respectable for both the parties', who testified that Mehtab Singh was suffering from osteo-arthritis in both his knees, as also from LS Spondolysis and Anameia etc., and in fact the doctor was never cross-examined in detail on the state of health of Mehtab Singh, even though he was his regular medical attendant, as is also stated by him in the foot note of the admitted Will Ex.PW7/1, (wherein he states to the aforesaid effect with regard to the medical condition of Mehtab Singh, including the fact that he was unable to move about and therefore go to civil courts, but that he was mentally alert and had executed the Will of his "own sweet will", and further, that this witness was his "usual medical attendant").

- vii) Next, learned senior counsel pointed to the fact that PW3 Ram Singh, a clerk in the office of the Tehsildar, had duly admitted the site plan Ex.P3, as also the sale deed in question (the photocopy of which was shown to be Mark-C on the record of the court), and therefore the learned courts below had wholly erred in holding that the comparison of the signatures was from "outside the judicial file", even though an application had been moved before that court on 20.01.1999, seeking to compare the two signatures, with the court having permitted the hand writing expert to take photographs (though no specific order in that regard was pointed to from the file).

- viii) Next, learned senior counsel on behalf of the appellant submitted that it was never explained as to how the money received by Mehtab Singh was actually utilised, because the widowed daughter for whom it was allegedly taken (as per the testimony of respondent Jagtar Singh, though not stated by him in the written statement), was actually a lady of sound financial means, who also did not step into the witness box to admit having received such an amount, nor was any transfer of money shown into her account, with in fact her not having opposed the plaint itself, despite her and the sisters of the parties having been impleaded as defendants no.4 to 7 in this suit. Hence, with Mehtab Singh having died about one month thereafter, i.e. on 07.02.1996, as to where the money went, has not been proved anywhere; and consequently it proves that actually there was no sale transaction at all, with no consideration having passed between respondent no.1 and Mehtab Singh, who was otherwise financially sound, he admittedly being a person paying for his own medicines, as admitted by the respondent-defendant no.1 in his cross-examination.
- ix) Last, Mr. Kanwaljit Singh submitted that with the sale deed in question never having been produced before any authority for mutation of any part of the house/co-ownership thereof, obviously that was for the reason that no such genuine sale had been made by Mehtab Singh, with the sale deed itself also never disclosed till after Mehtab Singhs' death (by the Jagtar Singh), which is why none of the other siblings of the appellant and defendant no.1 supported the case of the said respondent, either before the courts below or even before this court.

30. On sale consideration admitted to be paid before the Sub-Registrar not being firm proof of such payment but a rebuttable one, learned senior counsel relied upon a judgment of the Allahabad High Court in

Hakimuddin v. Mohammad Anis 1998 (2) CCC 366, as also one of the Madhya Pradesh High Court in Hariher Prasad v. Smt. Basant Kumari Gupta & others Law Finder Doc Id # 121484

On even a registered sale deed not being a valid transaction of sale when no sale consideration has actually passed, he cited a judgment of this court, in Arjan Singh v. Mehar Singh and others Law Finder Doc Id # 409597, as also in Sadhu Ram v. Gurnam Singh and others Law Finder Doc Id # 783345.

31. *Per contra*, Mr. S.D.Sharma, learned senior counsel appearing for respondent-defendant no.1, made the following arguments:-

- i) That stamp papers were purchased by Mehtab Singh himself on 10.01.1996 as shown on the back of the first page of the sale deed, Ex.D1, which was got registered by him on 12.01.1996 after it was written out/typed on 11.01.1996.

Thus, as per Mr. Sharma, with the Sub-Registrar also having endorsed on the sale deed that Mehtab Singh had admitted to having received the sale consideration, there was no reason to disbelieve that the consideration was duly paid.

- ii) He next submitted that the courts below have not erred in holding that the site plan from which the signatures of Mehtab Singh were taken was not actually on the judicial file, because in any case it was not an exhibited document shown to be a part of the sale deed, and therefore, signatures compared from any photographs thereof, could not be held to have been validly compared.

Upon it being pointed to learned senior counsel that even Jagtar Singh not having denied the site plan, why it should not be accepted as the correct site plan originally annexed with the sale deed Ex.D1 (reference his cross-

examination at page 3 of his testimony as pointed out by the 'opposite counsel'), learned senior counsel for the respondent submitted that in any case the signatures were not even compared with the original site plan but with only photographs taken thereof, which admittedly were taken not in the presence of the Presiding Officer but only in the presence of the court Ahlmad, who alone was stated to have informed the said witness that they were from the court file. As such, he submitted that no sanctity could be attached to such comparison, especially as the fingerprint expert also admitted that he did not know who the person was who had brought the record.

- iii) Mr. Sharma next submitted that as regards the other brothers and sisters of the two contesting parties not having opposed the plaint, that once they came to know that their brother had paid Rs.92,000/- for the sale deed, they did not step forward to actually testify in support of the written statement and therefore simply their pleadings could not be considered to be taken to be acceptance of the contentions of the plaint.
- iv) As regards the testimonies of Pws5, 6 and 7 on Mehtab Singhs' physical condition (of him being unable to walk), learned senior counsel for the first respondent reiterated what has been held by the learned courts below, to the effect that as regards PW5 Raj Kumar, his testimony only being that he had heard that Mehtab Singh was unable to walk since 1995, that could not be held to be his personal knowledge of his condition; and as regards Dr. K.K. Grover PW7, he submitted that no medical document having been produced by him to prove that Mehtab Singh was unable to walk, simply his oral testimony could not be accepted to be the truth.
- v) Learned senior counsel next submitted that even as per PW5, Mehtab Singh was actually living with respondent Jagtar Singh in the same house till his death and therefore it

would be natural for him to give more property to that son who was living with him, with it also being the admitted position that the appellant-plaintiff had shifted to a different house in a different locality since 1988, and therefore was not serving his father at least for the last 8 years before his death.

- vi) Mr. Sharma further submitted that as regards the testimony of DW1 Jagjit Rai, to the effect that he made an entry with regard to the sale deed being typed out on 21.01.1996, but with the sale deed actually shown to have been written out on 11.01.1996, it was obviously an error on his part because the photocopy of his register, i.e. Ex.D2, duly shows that the entry was made at Sr. no.21 on 11.01.1996 itself.
- vii) As regards Mehtab Singh not being able to purchase the stamp papers on 10.01.1996, Mr. Sharma submitted that since that was a contention of the appellant-plaintiff, it was for him to have summoned the register of the stamp vendor to try and disprove any signature of Mehtab Singh on it, showing that no sale of the stamp papers had been made to him on that date.
- viii) In that context, learned senior counsel referred to clause (xiii) of Rule 28 of the Punjab Stamp Rules, 1934, which provides as one of the conditions of the licence granted to a stamp vendor, that he has to write in his own hand behind the stamp paper sold, the name and residence of the purchaser thereof, including that of any person who has purchased it on behalf of another person (the principal), with corresponding entries to be made in the vend register, on which also the purchaser must affix his signature or thumb impression.
- ix) Mr. Sharma next submitted that nobody from the office of the Sub-Registrar testified to the effect that the sale deed was a fake and forged document and consequently, as a registered document, it has to be accepted to be a true

document.

- x) Lastly, learned senior counsel submitted on behalf of the first respondent-defendant, that simply because the sale deed dated 11.01.1996 does not find any mention in the Will dated 22.01.1996, that does not mean that the sale deed is not a valid document, and obviously the Will has to be construed to be one that was executed qua whatsoever property remained in the hands and title of the executor of the Will, i.e. Mehtab Singh.

32. In rebuttal to the aforesaid arguments, Mr. Kanwaljit Singh, learned Senior Counsel submitted as follows:

- i) That as regards the report of the handwriting expert, PW-4, firstly, the contesting defendant-respondent no.1, Jagtar Singh, having admitted the site plan to be one that was annexed with the sale deed, it being 'formally' an exhibit on the judicial file or not makes no difference, and even if, therefore, only photographs were taken for the purpose of comparison, that does not annul the report of the expert.

He further submitted in that context that in any case no expert had been examined by the contesting defendant to disapprove the report of the expert, PW-4, examined by the appellant-plaintiff.

- ii) On the question of the other brothers and sisters of the contesting party not having testified, learned senior counsel submitted that with defendants no.3 to 5 having filed a joint written statement admitting all the contents of the complaint, and defendant no.2, namely Rishi Raj Singh, having filed a separate written statement also admitting to it, including the fact that he

was working in Jammu & Kashmir, and with the sisters being married, residing in their own matrimonial home, and further, with defendant no.3, Charanjit Singh, residing in Thailand, it was obviously inconvenient for them to come and depose in support of their written statements, but that cannot be held to be in favour of defendant no.1 either, because in any case his stand has not been supported by them in any written statement filed.

iii) As regards the testimony of PWs 5, 6 and 7, Mr. Kanwaljit Singh submitted that PW5, Raj Kumar, testifying to the effect that he only heard that Mehtab Singh was unable to walk since 1995, that cannot be construed to the effect that he did not know that he was unable to walk, because he, as per his testimony, was coming and going to the house, and the only thing that could be attributed to hearsay was as to since when Mehtab Singh was incapacitated.

As regards the testimony of Dr. Kiran Kumar Grover, learned counsel submitted that once a qualified medical practitioner was testifying that Mehtab Singh was under his treatment, simply because he did not produce any documentary evidence to that effect, it would not negate the testimony.

He further submitted that this should be especially so as the Will executed by Mehtab Singh is fully admitted by the contesting respondent-defendant, and with Dr. Grover having written on the will itself that Mehtab Singh was unable to move about, but was otherwise mentally alert and had signed the will in his presence, there would be no question of doubting his testimony.

iv) As regards the contesting respondent living with Mehtab

Singh, with the appellant-plaintiff not living in the same house, Mr. Kanwaljit Singh submitted that the document that learned senior counsel for respondent no.1 was relying upon, was not a gift deed but a sale deed, ostensibly showing consideration paid. Hence, it could not be said that the alleged transfer of a portion of the house to Jagtar Singh by Mehtab Singh was out of any special love and affection held for him over and above his other sons.

v) Last, learned senior counsel for the appellant again reiterated that with the Will admittedly executed 11 days after even the document set up by the contesting respondent, it was extremely strange that Mehtab Singh would not even refer to that fact in the will, and would simply refer to his house as a single unit, without stating therein that it would be considered as two separate units, i.e. one sold by him to Jagtar Singh and the remaining to be divided between his sons equally.

33. Hence, Mr. Singh submitted that with the alleged sale deed necessarily having been executed in extremely suspicious circumstances, it could neither be accepted that it was actually executed by Mehtab Singh; and if at all it was so executed by him, then it was obviously done under pressure, which is why he did not disclose about it in his Will, though in any case he could not have gone to the Registrars' office to get it registered, in his medical condition.

34. Having considered the aforesaid arguments, as also the judgments of the learned Courts below, what first needs to be looked at by this Court is, as to whether a registered document, not otherwise disproved to be registered even by the appellant-plaintiff, can be ignored by this Court to hold that

Mehtab Singh did not execute the sale deed and thereafter did not get it registered, and even if he did, can the sale deed still be held to be not validly executed.

In other words, whether question no.(ii) framed as a substantial question of law in terms of Section 60 of the Registration Act, 1908, can be answered in favour of the appellant-plaintiff or not.

This would, in fact, need to be seen together with question no. (i) raised above in the context of Section 54 of the Transfer of Property Act, with both the said provisions reproduced hereinbelow:-

Section 54 of the Transfer of the Property Act, 1882:-

“54. “Sale” defined.-- “Sale” is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made.-- Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion of other intangible thing, can be made only by a registered instrument.

In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale.—A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or

charge on such property.”

Section 60 of the Registration Act, 1908:-

“60. Certificate of registration-- (1) *After such of the provisions of Sections 34, 35, 58 and 59 as apply to any document presented for registration have been complied with, the registering officer shall endorse thereon a certificate containing the word “registered”, together with the number and page of the book in which the document has been copied.*

(2) Such certificate shall be signed, sealed and dated by the registering officer, and shall then be admissible for the purpose of proving that the document has been duly registered in manner provided by this Act, and that the facts mentioned in the endorsement, referred to in Section 59 have occurred as therein mentioned.”

35. Thus, sub-section (2) of Section 60 of the Registration Act stipulates that a certificate sealed, signed and dated by the registering officer, shall be admissible for the purpose of proving that the document has been duly registered and further that the facts mentioned in the endorsement, as referred to in Section 59 of that Act, have occurred as are therein mentioned.

Section 59 of the Act of 1908, reads as follows:-

“Endorsement to be dated and signed by registering officer. *The registering officer shall affix the date and his signature to all endorsements made under Sections 52 and 58, relating to the same document and made in his presence on the same day.”*

36. In this context, as was pointed out by learned counsel for both parties (though naturally with their reasoning opposed to each other), that the endorsement dated 12.01.1996, behind the first page of the sale deed dated

11.01.1996, is to the effect (with the stamp in Punjabi/Gurmukhi not being fully readable), that Mehtab Singh came present before that authority along with Bihari Lal, the signatures of Mehtab Singh shown to have been made in Gurmukhi, those of Jagtar Singh in Gurmukhi and English, of Mehnga Ram in Gurmukhi, and of Bihari Lal in English (though the names of all of these people are written in Gurmukhi).

Further, the sale deed was testified to have been typed out on 10.01.1996 by DW-1, Jagjit Rai, with him having stated that he had entered it in his register thereafter. (The witness is shown by the counsel for the appellant-plaintiff to have testified that he had entered it in his register on 21.01.1996, but the photocopy of the document Ex.D2, shows the entry to be made on 11.01.1996 at Sr. no.21, as pointed out by learned counsel for the respondent).

Thus, as regards the document being typed out and entered in the register of the deed writer, with nothing shown to prove that the sale deed was not actually typed out by the said deed writer, I would not hold that it was not so typed out, even though Ex.D2 is only a photocopy of the register. However, no cross-examination is shown to have been conducted qua DW-1 to the effect that the said photocopy was not actually from the register of the deed writer.

Thus, the argument of Mr. Sharma, learned senior counsel for respondent no.1, to the effect that the learned courts below have not erred in holding the sale deed dated 11.01.1996 to have been duly registered on 12.01.1996, is not an argument that has been successfully dislodged by learned senior counsel for the appellant, especially with the witness produced by the appellant-plaintiff, i.e. PW3 Ram Singh, from the office of the Sub-Registrar/Tehsildar, also not having stated that the said document was not

actually registered on that date.

Hence, as regards the factum of the sale deed, Ex.D1, having been actually registered on 12.01.1996, I would hold that the courts below have not erred in coming to the finding of the registration having been duly carried out.

37. Next, it is also to be noticed in favour of respondent no.1, that it is not understood as to why it was only the signatures of Mehtab Singh on the site plan (that was stated to have been annexed with the sale deed), that were compared with his standard signatures (as per the case of the appellant-plaintiff), and why it was not the signatures on the sale deed, Ex.D1, that were got so compared, by the appellant-plaintiff.

Further, undoubtedly, the signatures compared by the handwriting expert, PW4, are from photographs stated to have been taken in the presence of the Court Ahlmad, and not on authority of the trial court, with no order pointed to from the record of that court allowing photographs to be taken for the purpose of comparison of the signatures, even though an application in that regard is stated to have been made.

Hence, I also do not see any error in both learned courts below holding that the report of the handwriting expert, PW4, cannot be accepted.

38. Consequently, as regards question no.(iii) found to be arising in this appeal, it is held that the learned courts below did not err in rejecting the report of the hand writing expert, PW4, on the aforesaid ground.

39. Even having held so, the question however still is, as to whether registration of that document would firstly prove that it was Mehtab Singh who executed it, and if so, whether he executed it of his own free will, or under any emotional pressure from the son who was living with him, and further, even if no such pressure is proved, whether it can still be held to be a valid sale

transaction in terms of Section 54 of Transfer of Property Act or not, and consequently whether the presumption on the validity of a registered document, can be and has been successfully rebutted or not.

40. In that context, it needs to be noticed that though the registration of the document is not in doubt, it has not been argued even on behalf of respondent no.1 that the witness from the Sub-Registrars' office (PW3), actually stated that Mehtab Singh was positively identified by the Sub-Registrar (as Mehtab Singh himself).

It further needs to be observed, even though that is going into a concurrent finding of fact recorded by both the courts below, that the signatures in Gurmukhi of Mehtab Singh, on the admitted Will dated 22.01.1996, are not exactly the same as are those on the sale deed, as has been pointed out by Mr. Kanwaljit Singh.

Whether that is simply on account of the old age of Mehtab Singh or otherwise, cannot be commented upon by this Court, in the absence of any other signature of his in Gurmukhi that is shown to have been produced in evidence before the trial court.

His signatures on his bank documents as were pointed to (which are only shown to be marked documents, Marks A and B), are in English and not in Gurmukhi.

It needs to be also noticed that on the Will, Ex. PW-7/1, his signatures are seen to be in Gurmukhi, with Mehtab Singhs' name and address written in hand, (though stated by learned counsel for the appellant-plaintiff to be actually his signatures in English), with the latter (in English) appearing to the naked eye to be similar to those on the said bank documents. However, that 'commonality' actually has no meaning, because the will in any case is

admitted by respondent-defendant no.1 to have been executed by Mehtab Singh, the signatures thereupon therefore not being in doubt.

Thus, with there being no signature in English on the sale deed relied upon by the said respondent-defendant, this Court can reiterate only to the effect that the signatures in Gurmukhi on the said deed are not exactly the same as those on his admitted will, though I would (again) not be able to comment as to whether that was only on account of his old age, or otherwise.

41. However, in view of the above, I would have reservations in accepting as fully proved as to whether or not Mehtab Singh actually appeared before the Registrar himself and had signed the document or not, in the face of the testimony of three witnesses, i.e. PWs 5, 6 and 7, stating to the effect that he was unable to move. Of course, he easily could have been taken to the Registrars' office on a vehicle with somebody supporting him to sit on it/in it.

But even presuming that Mehtab Singh actually signed the sale deed in the presence of the Registrar on 12.01.1996, what this Court cannot but observe is that the sale deed, even if executed by Mehtab Singh, has to be looked at with suspicion for three very glaring reasons as are given hereinafter.

(i) That it is indeed very strange that when Mehtab Singh admittedly executed a will on 22.01.1996 (Ex.PW7/1), he simply referred to his house as 'my above said house', it having been described as his place of residence in the opening sentence of the will (written in Punjabi, in the Gurumukhi script).

There is not even a vague reference to the effect that any part of house no.27/1 (old house no.14/5), as described in the top part of the will, in Gali Sakia Mohalla Purbiyal, Phagwara, was alienated by him 11 days earlier vide a sale transaction in favour of the son living with him, i.e. respondent-defendant no.1, Jagtar Singh.

Of course it is quite possible that Mehtab Singh in his last days did not wish to create a rift either between his sons, or between himself and his other sons, and for that reason may not have disclosed the factum of the sale/transfer to the other sons.

Yet, with the will not disputed at all by respondent-defendant no.1, he having admitted to its execution, I would find it very strange that Mehtab Singh referred to himself as the owner of his house (and not a part thereof), and stated in that very will that after his death, the house should be divided equally between his 4 sons.

ii) Secondly, seen with the aforesaid fact, is also the fact that respondent-defendant no.1, other than examining DW-2, could not prove in any manner that Rs.92,000/- was actually paid by way of sale consideration by him to his father. No part of the sale price was actually paid before the Sub-Registrar, it having been stated that Jagtar Singh had actually received it at home, to which effect DW2, Bihari Lal, (a property dealer as per his cross-examination), testified, stating that Rs.92,000/- was paid by Jagtar Singh to Mehtab Singh “in the house”, in his presence.

However, no bank statement is shown to have been led by way of evidence by respondent-Jagtar Singh, to show that he had withdrawn any money from his bank, with him also not having examined either his wife or her brothers or any other relatives, from whom he himself stated he had obtained a large part of the consideration money (Rs.72,000/- out of Rs.92,000/-). Therefore, it becomes doubtful as to whether actually any consideration was paid in respect of the sale; and consequently with no firm proof of such sale consideration paid, it has to be held that it was not paid.

Hence, in my opinion, a sale transaction without payment of sale

consideration, cannot be accepted to be a valid sale in terms of Section 54 of the Transfer of Property Act, and therefore any such transfer could at best have been by way of a gift deed, which otherwise may have been natural, as Jagtar Singh (respondent no.1) was found to have been living with him.

iii) Yet, it was never the stand of respondent no.1 at any stage that his father had gifted him the said property, which otherwise this Court may have believed completely, in view of the fact that it was he who was staying with his father, with all his other brothers, including the appellant-plaintiff, not living with him, two brothers not being in Phagwara at all, and the appellant-plaintiff living in a separate locality altogether at least for 8 years prior to Mehtab Singhs' death.

Also, if it was a gift made to the son who was living with him, nothing prevented Mehtab Singh from terming the transaction to be a gift deed, and further, then that gift deed would also, in any normal circumstances, have found mention in the Will he executed 11 days later, in which (to repeat), he simply referred to his property as his house, and not a part thereof.

In the present case, the sale price/consideration is stated to be Rs.92,000/- and not the love and affection that Mehtab Singh may have held for his son Jagtar Singh who was living with him.

Consequently, with the said sale price also not duly proved to have been paid, as held hereinabove, and the transaction not even claimed by Jagtar Singh to be a gift, the document, Ex.D1, can neither be held to be a valid sale deed, nor, of course, a gift deed.

iv) Next, it needs to be observed that nothing is shown as to where the sale consideration as is alleged to have been paid, was utilized by Mehtab Singh, who admittedly was very old (90-92 years of age), and in fact had died

one month later. No deposit in his bank of any such money was even attempted to be proved by respondent-defendant no. 1 and further, his contention that the money was to be given to Mehtab Singhs' widowed daughter, also finds no authentication by way of examination of such daughter or any of her immediate family, to show that any such money was paid to her, with the written statements filed by two of the daughters, i.e. defendants no. 4 and 5, along with their brother, defendant no. 3 Charanjit Singh, admitting the case of the plaintiff, defendants no. 6 and 7 not even having bothered to file a written statement, they having been shown to be in Thailand, as per the memo of parties before the trial Court. (Defendant no. 3 is also shown to be a resident of Thailand as already noticed earlier).

v) Last, it needs to be specifically noticed, as was pointed out by Mr. Kanwaljit Singh learned counsel for the appellant, that the admitted Will dated 22.01.1996, contains on it an endorsement written in hand by Dr. K.K. Grover (PW7), to the effect that Mehtab Singh, aged 92 years, was examined by him at Mehtab Singhs' house, with him found to be suffering from osteo- arthritis in both knees, as also from spondylolysis (and another illegible medical issue), and was unable to move about and to go to the civil court, but that he was mentally alert and had signed the Will in the presence of the doctor, of his “own sweet will”.

It is also stated by PW7, that he was his “usual medical attendant”.

Hence, in my opinion, the Will itself not having been at all doubted by respondent no.1, his contention that Dr. Grover was not his medical attendant, with the seal of the doctor on the will showing him to be an MBBS degree holder clearly visible on the Will (as pointed out by learned senior counsel), the respondent cannot be seen to challenge the fact that Dr.

Grover's testimony is not believable, though undoubtedly there has been no other medical written document pointed to by either counsel as regards the health of Mehtab Singh.

Yet, with the aforesaid endorsement having been made on the admitted Will, I would not hold that Mehtab Singhs' condition was not as is described therein, with PW7 (Dr. Grover) also stating that the Will had been signed by Mehtab Singh in his presence.

41. Consequently, in my opinion, even while attaching sanctity to a registered document (sale deed) that has not been otherwise disproved to have been executed, I would have to express my reservation on whether it was actually Mehtab Singh who executed it, with him not having referred to it at all in his will, which as per the admitted case of even respondent no.1, was executed 10-11 days later; thereby making the sale to be a suspicious transaction, seen further with the fact that, even if executed by Mehtab Singh, the sale itself cannot be held to be a valid transaction in the absence of any sale consideration duly proved to have been paid.

42. In view of the above, it is held that the sale deed dated 11.01.1996, registered on 12.01.1996, was not a valid transaction in terms of Section 64 of the Transfer of Property Act, 1882, and in any case with it not at all referred to in the subsequent will of Mehtab Singh, executed 11 days later qua the same property, it also cannot be held to be free of suspicion.

The first question of law framed in paragraph 28A hereinabove, is therefore answered to the effect that the said sale deed was not a valid transaction in terms of Section 54 of the Transfer of Property Act, 1882; and the 2nd question of law is answered to the effect that though a registered document would be presumed to have been correctly registered at the instance

of the parties to the transaction in terms of Section 60 of the Registration Act, 1908, however the 'correctness' of the contents of the document and its legality, is a rebuttable presumption, with the appellant-plaintiff having successfully rebutted it in the present case.

43. Consequently, for both the above reasons, this appeal is allowed, with the judgments and decrees of the Courts below set aside. The suit of the plaintiff is thus decreed in his favour with costs throughout, with the suit property held to have devolved upon the plaintiff and his three brothers equally, in terms of the admitted will executed by their father, Mehtab Singh on 22.01.1996.

A decree sheet be prepared accordingly.

September 13, 2019
dinesh/nitin

(AMOL RATTAN SINGH)
JUDGE

1. Whether speaking/reasoned?	Yes/No
2. Whether reportable?	Yes/No