

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.649 OF 2019
WITH
CIVIL APPLICATION NO.766 OF 2019
IN
SECOND APPEAL NO.649 OF 2019**

Kanji Ravaria @
Kanji s/o. Dharamshi Ravaria,
57 years, res. At 85,
Bora Bazaar Street,
Fort, Mumbai.

...Appellant
(Original Defendant No.2)

Versus

1. Anis Ismail Khoja (Karmali)
an adult, Occ: Business
res. At 38, Amyanbad,
Aga Hall, Nesbit Road,
Mazgaon, Opp. Angir Wadi,
Mumbai.

2. Kaushik Premkumar Mishra
age 50 years, Occ: Business

3. Smt. Malti Premkumar Mishra.
Age 70 years, Occ: Household

4. Premkumar Ayodhyaprasad
Mishra (deleted since deceased is
represented by Respondent Nos.2 &
3)

...Respondents.
(Respondent No.1 is original
Plaintiff and Respondent Nos.2
and 3 are original Plaintiffs)

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SALGAONKAR
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Mr. Sandesh D. Patil i/b. Ms Divya A. Pawar-Patil for the Appellant
Mr. Sanjiv Sawant with Mr. Abhishek Matkar i/b. Mr. Abhishek P.
Deshmukh for Respondent No.2.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED: 9th JUNE, 2022.

JUDGMENT:-

1. Heard finally with consent of the parties.
2. The Appellant herein has challenged the Judgment dated 17.03.2019 in Civil Appeal No.28 of 2016. By the impugned judgment, the learned District Judge, Palghar allowed the appeal, set aside the judgment and decree dated 24.02.2016 in Special Civil Suit. No.46 of 2011 and consequently decreed the Suit and declared that the Deed of Conveyance dated 03.12.2010 between the Appellant and Respondent No.1 void ab initio and not binding on the Respondent Nos.2, 3 and 4. The learned Judge also restrained the Appellant and Respondent No.1 from obstructing possession of the Respondent Nos. 2, 3 and 4 and creating third party interest in respect of the suit property.
3. The Respondent Nos.2, 3 and 4 shall be hereinafter referred to as the Plaintiff Nos.1 to 3, whereas the Respondent No.1 and the Appellant shall be referred to as Defendant Nos.1 and 2 respectively.
4. The dispute is in respect of portion of land admeasuring 1.70 hectores of property under Survey No.13/1 of village-Shelavli, Palghar.

The said property shall be hereinafter referred to as 'the suit property'.

5. The Defendant No.1 was the owner of the property under Survey No.13/1 of village Shelvali with total area of 3 hectores 40 Ares. The case of the Plaintiffs as set out in the plaint was that Plaintiff No.1 and his brother-Amrish had purchased the suit property from Defendant No.1 by deed of sale dated 02.12.1985 pursuant to which they were put in possession of the suit property. The remaining portion of survey No.13/1 was purchased by one Param Umakant Mishra and Sohardha Mishra. Amrish expired on 08.10.1999 and that his widow has remarried. The Plaintiff Nos.2 and 3, the parents of Amrish are stated to be his successors. The Plaintiffs claimed that they were in a state of shock due to untimely death of Amrish and hence, they did not get their names recorded in the survey records.

6. It was further averred that on 08.06.2011 they saw the Defendants inspecting the suit property. The Defendant No.2 told the Plaintiffs that he had purchased the suit property and threatened to take forcible possession of the suit property. The Plaintiffs lodged a police complaint and later obtained a copy of sale deed dated 14.06.2011 executed by Defendant No.1 in favour of Defendant No.2. The Plaintiffs claimed that the suit property was already sold to Plaintiff No.1 and his brother -

Amrish and the subsequent sale deed in favour of Defendant No.2 is null and void. Based on these pleadings the Plaintiffs filed a suit seeking declaration that the sale deed dated 03.12.2010 as null and void and sought cancellation of the said sale deed. The Plaintiffs also sought to restrain the Defendants from disturbing their possession and creating third party rights in respect of the suit property.

7. The Defendants filed their written statement and contested the suit. Defendant No.1 denied having executed sale deed dated 02.12.1985 in favour of Plaintiff No.1 and his brother and or having put them in possession of the suit property. It was further stated that the Plaintiff No.1 and his brother were minors on the date of execution of the said agreement dated 02.12.1985 and hence the said agreement is itself void. The Defendant No.1 averred that he has transferred his right, title and interest in the suit property in favour of Defendant No.2 vide sale deed dated 08.06.2011.

8. The Defendant No.2 also challenged the validity of the sale deed dated 02.12.1985 on the ground that the sale deed was not signed by the guardian of the Plaintiff No.1 and his brother - Amrish, who were minors at the relevant time. The Defendant No.2 questioned the validity of the sale deed on the ground that the same has been registered after a

period of 25 years without complying with the procedure contemplated under Sections 36 and 37 of the Registration Act, 1908. Defendant No.2 claimed that since the title of the Plaintiffs was in dispute, the Plaintiffs were required to sue for declaration of title and in the absence of such prayer, the suit itself is not maintainable.

9. The Trial Court framed several issues. With respect to the issue relating to the validity of the sale deed, learned Trial Judge after considering the evidence on record held that the Plaintiff and his brother -Amrish were minors on the date of execution of the sale deed dated 02.12.1985 (Exhibit-54) and hence they were not competent to contract under Section 11 of the Indian Contract Act. It is held that though the father is the natural guardian, Plaintiff No.2, mother of Plaintiff No.1 and Amrish, was shown as the guardian of Amrish. Learned Trial Judge did not rely upon the evidence of PW3, who claimed to have seen Defendant No.1 signing the sale deed at Exhibit-54, in view of the fact that this witness had admitted that he was seven years of age as on the date of the execution of the said sale deed. Learned Judge held that the presence of PW3 at the time of execution of the document is doubtful. The learned Judge further held that the Plaintiffs have not examined Plaintiff No.2 and the parents of PW3, who were stated to be present at the time of execution of the sale deed.

10. Learned Judge observed that there is overwriting in respect of mode of payment of consideration and that there is no evidence to prove payment of any consideration. Learned Judge further observed that the challans attached to the sale deed show that the deficit stamp duty was paid on 14.06.2011. Learned Judge observed that the Sub Registrar had not made an endorsement about the deficit stamp duty and had not sent the sale deed to the collector for determining the stamp duty. The learned Judge also observed that no explanation was forthcoming for not registering the sale deed for over 25 years. Learned Judge therefore held that the said sale deed did not prove the title of the Plaintiffs in respect of the suit property. The Defendant No.2 had purchased the suit property after taking search report and had got his name mutated in survey records, which fact proves his possession. Based on these findings learned Judge dismissed the suit. Being aggrieved by this judgment, the Plaintiffs preferred an appeal before the District Court.

11. Learned District Judge held that the mother of the Plaintiffs was competent to execute the sale deed (Exhibit-54) as a guardian even during the life time of the father. Learned District Judge further held that Defendant No.1 had not stepped into the witness box and hence the plea raised by him that the sale deed at Exhibit-54 is void ab initio

cannot be accepted. Learned District Judge held that sale deed at Exhibit 54 was presented before the Sub Registrar on 2.12.1985. Though the sale deed was registered on 14.06.2011, the title of the property relates back to the date of execution of the sale deed. Learned District Judge further held that the sale deed indicates that the Defendant No.1 had handed over possession of the suit property to the Plaintiffs. The fact that the sale deed at Exhibit-54 was signed only by Defendant No.1, was not relevant as an agreement could be unilateral or bilateral and an agreement executed unilaterally by the vendor is a valid agreement. The learned District Judge further held that even if the Plaintiff and his brother were minors, an agreement with minors is voidable at the discretion of the minor. The learned District Judge held that sale deed at Exhibit-54 proves title of the Plaintiffs and that the Defendants have not sought cancellation of the said sale deed. Based on these findings, the judgment of the Trial Court was set aside, and the suit was decreed as stated above. Being aggrieved by this order the Defendant No.2 has filed this second appeal under Section 100 of CPC.

12. The substantial questions of law raised in the appeal are :-

- (i) Whether execution of the sale deed dated 02.12.1985 at Exhibit 54 has been duly proved;
- (ii) Whether the sale deed at Exhibit 54 conveys title in

favour of the Plaintiffs;

- (iii) Whether the findings of the first appellate court on the issue of execution and validity of sale deed dated 02.12.1985 are not based on evidence on record and are perverse.

13. Mr. Sandesh Patil, learned Counsel for the Defendant No.2 submits that the purchasers to the sale deed at Exhibit 54 were minors and were not competent to contract under Section 11 of the Indian Contract Act. He further submits that the Plaintiff No. 2 had not stepped into the witness box to prove execution of the sale deed. Withholding such material evidence necessitates drawing of adverse inference.

14. He further submits that the Plaintiffs who claimed title to the suit property on the basis of the sale deed at Exhibit 54 were required to prove execution of the sale deed. The Plaintiffs having failed to discharge the burden, onus would not shift on the Defendant No.1 to prove that he had not received the sale consideration and or that the Plaintiffs were not put in possession of the suit property. He further submits that since the Defendant had disputed genuineness of the sale deed and raised a cloud on the title of the Plaintiffs, the suit without a

declaratory relief is not maintainable. He further submits that the findings of the learned District Judge are perverse and not based on evidence on record. He has relied upon the decision of the Apex Court in ***Hero Vinoth (minor) vs. Seshammal AIR 2006 SC 2234*** wherein the Hon'ble Supreme Court has summarized the principles relating to Section 100 CPC and held that the general rule that the High Court will not interfere with the concurrent finding of the Courts below is not an absolute rule and that some of the exceptions are where the Courts below have ignored material evidence or acted on no evidence, where the court has drawn wrong inference from proved facts or where the court has wrongly cast the burden of proof. He submits that the sale deed at Exhibit 54 has been registered 25 years from the date of its execution. The execution of the sale deed is in total breach of the statutory provisions. Such a sale deed would not convey title in favour of the Plaintiffs.

15. Per contra, Mr.Sawant, learned Counsel for the Respondent submits that the purchasers were duly represented by the Plaintiff No.2. He submits that the evidence of PW1 proves that the suit property was purchased by sale deed at Exhibit 54, that the sale consideration was paid to Defendant No.1 by cheque and that the Plaintiffs were put in possession of the suit property. He submits that the sale deed at Exhibit

54 was signed by the vendor and his signature has been duly identified by PW2 Advocate Joshi. The said sale deed has been registered and by virtue of Section 47 of the Indian Registration Act, the document takes effect from the date of its execution and not from the date of its registration. He has relied upon the decision in ***Gurbax Singh vs. Kartar Singh & Ors. (2002) 2 SCC 611***. He submits that the sale deed which was executed in favour of the Plaintiffs at prior point of time proves the title of the Plaintiffs in respect of the suit property. He submits that the findings of the first Appellate Court are based on evidence on record and there being no error in law, there is no scope for interference with the finding of facts under Section 100 of CPC.

16. I have perused the records and considered the submissions advanced by the learned Counsel for the respective parties.

17. Before dealing with the questions raised in the appeal, it will be appropriate to consider the scope of Section 100 and 103 of CPC which read thus:

“100. Second appeal.-(1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any court subordinate to the High Court, if the High Court is satisfied

that the case involves a substantial question of law.

(2) An appeal may lie under this section from an appellate decree passed ex parte.

(3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question."

Section 103 -Power of High Court to determine issues of fact- In any second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue necessary for the disposal of the appeal,-

(a) which has not been determined by the lower Appellate Court or both by the Court of first instance and the lower Appellate Court, or

(b) which has been wrongly determined by such Court or Courts reason of a decision on such question of law as is referred to in section 100.

18. While considering the scope of these two provisions, the Apex Court in **Ramathal v/s. Marutathal AIR 2018 SC 340** has observed thus :-

" 15. A clear reading of section 100 and 103 of the CPC envisages that a burden is placed upon the appellant to state in the memorandum of grounds of appeal the substantial question of law that is involved in the appeal, then the high court being satisfied that such a substantial question of law arises for its consideration has to formulate the questions of law and decide the appeal. Hence a prerequisite for entertaining a Second appeal is a substantial question of law involved in the case which has to be adjudicated by the high court. It is the intention of the Legislature to limit the scope of second appeal only when a substantial question of law is involved and the amendment made to section 100 makes the legislative intent more clear that it never wanted the High Court to be a fact finding court. However it is not an absolute rule that high court cannot interfere in a second appeal on a question of fact, Section 103 of the CPC enables the High Court to consider the evidence when the same has been wrongly deter-

mined by the courts below on which a substantial question of law arises as referred to in Section 100. When appreciation of evidence suffers from material irregularities and when there is perversity in the findings of the court which are not based on any material, court is empowered to interfere on a question of fact as well. Unless and until there is absolute perversity, it would not be appropriate for the High Courts to interfere in a question of fact just because two views are possible, in such circumstances the High Courts should restrain itself from exercising the jurisdiction on a question of fact.

19. In ***Damodar Lal vs. Sohan Das & Ors. (2016) 3 SCC 78***, the Apex Court has held thus:

“8. “Perversity” has been the subject matter of umpteen number of decisions of this Court. It has also been settled by several decisions of this Court that the first appellate court, under Section 96 of the Civil Procedure Code, 1908, is the last court of facts unless the findings are based on evidence or are perverse.

9. In Krishnan v. Backiam, it has been held at para 11 that : (SCC pp.192-93)

11. It may be mentioned that the first appellate court under Section 96 CPC is the last court of facts. The High Court in second appeal under Section 100 CPC cannot interfere with the finding of fact recorded by the first appellate court under Section 96 CPC. No doubt the findings of fact of the first appellate court can be challenged in second appeal on the ground

that the said findings are based on no evidence or are perverse, but even in that case a question of law has to be formulated and framed by the High Court to that effect.”

20. When a finding of fact can be said to be perverse, has been explained in **S.R.Tewari vs. Union of India & Anr. (2013) 6 SCC 602**, wherein the Apex Court has held thus :-

“30. The finding of fact recorded by a court can be held to be perverse if or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is “against the weight of evidence”, or if the finding so outrageously defies logic as to suffer from the vice of irrationality. If a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with. (Vide Rajinder Kumar Kindra v. Delhi Admn.; Kuldeep Singh v. Commr. Of Police; Gamini Bala Koteswara Rao v. State of A.P; and Babu v. State of Kerala)”.

21. In **Hero Vinoth** (supra) the Hon’ble Supreme Court has summarized the principles relating to Section 100 CPC as under :

“(ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit)

will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves a debatable legal issue. A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.

(iii) The general rule is that High Court will not interfere with concurrent findings of the Courts below. But it is not an absolute rule. Some of the well recognized exceptions are where (i) the courts below have ignored material evidence or acted on no evidence;(ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to 'decision based on no evidence', it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.”

22. It is thus well settled that in second appeal under Section 100 of the Civil Procedure Code, the court has no jurisdiction to interfere with

finding of fact on the ground that the finding is erroneous. Interference is possible only if there is any perversity or illegality in the judgments of the Courts below or total absence in considering the evidence available on record or misreading of evidence on the part of the Courts below. The substantial questions of law framed in this appeal need to be answered keeping in mind the aforesaid dictum.

23. In the instant case, the Plaintiffs claim to have purchased the suit property by sale deed dated 02.12.1985 for sale consideration of Rs.40,000/-. The said sale deed dated 02.12.1985 (Exhibit 54) was presented for registration on 05.12.1985 but was registered on 04/06/2011. During the interregnum period, the Defendant no.2 purchased the suit property by registered deed of sale dated 03.12.2010. The Plaintiffs claimed that the title in respect of the suit property was already conveyed to them by deed of sale dated 02.12.1985 and hence sought cancellation of sale deed dated 03.12.2010 being null and void.

24. Before considering the validity of the sale deed dated 02.12.1985, it would be apposite to refer to the relevant provisions under the Transfer of Property Act and the Registration Act.

25. Section 54 of Transfer of Property Act defines what is 'sale' and

states that sale is transfer of ownership in exchange for a price paid or part paid and part promised. This section stipulates that such transfer, in the case of tangible immovable property of the value of Rs.100/- and upwards, or in the case of reversion or other intangible thing, can be made only by a registered instrument. It is thus evident that registration of the instrument is mandatory when the transfer is in respect of immovable property value of which is Rs.100/- or more.

26. Section 17 of the Registration Act specifies the documents, registration of which is compulsory. Section 23 and 25 provides the time line for presentation of documents for registration. The time allowed under section 23 for presenting the document is four months from the date of its execution with further period of four months as envisaged under section 25 of the Act. Thus the total period for presenting the documents is eight months from the date of the execution of the document.

27. Sections 28 to 31 deal with the place of registration of document relating to land. Whereas Section 32 refers to the persons, who are competent to present the documents for registration. Section 32(a) specifies that the documents can be presented for registration by (i) person executing the document, (ii) person claiming under this

document and (iii) in the case of a decree or order, by the person claiming under the decree or order. Clauses (b) and (c) of Section 32 provide that the documents can be presented by the representative or assign of such a person and agents of such person, representative or assign, duly authorized by a power of attorney.

28. Section 32(A), which has been inserted in the year 2009 mandates that every person presenting a document for registration under Section 32 shall affix his passport size photograph and finger prints to the documents. The proviso to the section provides that where such document relates to the transfer of ownership of immovable property, the passport size photograph and finger prints of each buyer and seller of such property mentioned in the document shall also be affixed to the document.

29. Section 34 mandates that subject to the provisions mentioned in the said section, no document shall be registered under the Act, unless the person executing such document, or their representatives, assigns or authorized agents appear before the Registering Officer within the time allowed for presentation under sections 23 to 26 of the Act. Section 34(3) contemplates an inquiry by the Registering Officer. Section 34(3) (a) enjoins upon the Registering Officer to inquire whether or not such

document was executed by the persons by whom it purports to have been executed. Section 34(3)(b) and (c) cast a duty on the Registering Officer to satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document and of any person appearing as a representative, assign or agent.

30. A plain reading of the provision indicates that person executing the document should be present in person or through a duly authorized representative and the registering officer has the authority to conduct limited enquiry as envisaged under Section 34 to satisfy himself as to whether the document presented for registration is executed by the person by the person who purports to have executed the document. Section 34 does not confer powers on the registering officer to evaluate the title or irregularity in the document. The enquiry contemplated under Section 34 is only to reassure the identity of the person executing the document.

31. Section 35 limits the powers of the registering officer either to register the document or refuse to register the document. If the persons executing the document, appears and the Registering Officer is satisfied that he is the person he represents himself to be and he admits execution, the registering authority is bound to register the document. Sub Section

3 of Section 35 confers powers on the registering authority to refuse registration of document if the executant denies having executed the document. The powers under Sections 34 and 35 are conferred on the registering authority as to prevent any fraud being committed by any party, while registering any document. Sections 36 and 37 empower the registering officer to issue summons requiring, amongst others, a person executing a document to appear at the registration office, if presence of such person is necessary for the registration of the document.

32. Section 47 provides that a registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made and not from the time of its registration. By virtue of this Section, once a registration has been effected, the sale deed becomes operative retrospectively from the date of execution. In other words, registration of a document relates to the back to the date of its execution.

33. Sections 51 to 59 prescribe the duties and powers of registering officer. Section 58 provides for the particulars to be endorsed on the document admitted to registration. Section 59 stipulates that the endorsements are to be dated and signed by the Registering Officer. Section 60 provides that after compliance with the provisions of

Sections 34, 35, 58 and 59, the registering officer shall endorse thereon a certificate containing the word 'register' together with the number and page of the book in which the documents has been copied. Such certificate is required to be signed, sealed and dated by the registering officer and shall be the proof of due registration of the document in the manner provided by the Act. Registration is deemed to be complete under Section 61(2) of the Registration Act after the contents of the documents, the endorsement thereon and certificate are copied in the relevant book. Thus, the sale in respect of an immovable property, value of which is Rs.100 or upwards is deemed to be complete only after the registering officer has complied with Sections 60 and 61 of the Registration Act.

34. In the instant case, the Plaintiffs have based their title on the sale deed dated 02.12.1985 Exhibit 54, allegedly executed in favour of Plaintiff No.1 and his brother by Defendant No.1. The Defendants had challenged the validity of the said sale deed on the ground that the said sale deed was not signed by the purchasers i.e. Plaintiff No.1 and his brother or by their mother (Plaintiff No.2) but was signed only by the vendor (Defendant No.1). While rejecting the challenge the learned District Judge has observed that an agreement can also be unilateral. These observations have no merits since the agreement envisages offer

and acceptance. A sale is essentially a bilateral contract between two parties on mutually agreed terms and conditions. The deed of conveyance cannot be executed unilaterally without the knowledge or consent of the purchaser.

35. In the case of ***Aloka Bose Vs. Parmatma Devi and Ors. (2009) 2 SCC 582*** the Hon'ble Supreme Court has held that

"15.... The observations in Mohd. Moharali stating that an agreement of sale is an unilateral contract is not correct. An unilateral contract refers to a gratuitous promise where only one party makes a promise without a return promise. Unilateral contract is explained thus by John D. Calamari & Joseph M. Perillo in The Law of Contracts (4th Edition Para 2-10(a) at pages 64-65):

"If A says to B, 'If you walk across the Brooklyn Bridge I will pay you \$ 100,' A has made a promise but has not asked B for a return promise. A has asked B to perform, not a commitment to perform. A has thus made an offer looking to a unilateral contract. B cannot accept this offer by promising to walk the bridge. B must accept, if at all, by performing the act. Because no return promise is requested, at no point is B bound to perform. If B does perform, a contract involving two parties is created, but the contract is classified as unilateral because only one party is ever under an obligation."

All agreements of sale are bilateral contracts as promises

are made by both - the vendor agreeing to sell and the purchaser agreeing to purchase.

16. On the other hand, the observation in S.M. Gopal Chetty ¹ that unless agreement is signed by both by the vendor and purchaser, it is not a valid contract is also not sound. An agreement of sale comes into existence when the vendor agrees to sale and the purchaser agrees to purchase, for an agreed consideration and agreed terms. It can be oral. It can be by exchange of communications, which may or may not be signed. It may be by a single document signed by both parties. It can also be by a document in two parts, each party signing one copy and then exchanging the signed copy as a consequence of which the purchaser has the copy signed by the vendor and the vendor has a copy signed by the purchaser. Or it can be by the vendor executing the document and delivering it to the purchaser, who accepts it.”

17. Section 10 of the Act provides all agreements are contracts if they are made by the free consent by the parties competent to contract, for a lawful consideration and with a lawful object, and are not expressly declared to be void under the provisions of the Contract Act. The proviso to Section 10 of the Act makes it clear that the section will not apply to contracts which are required to be made in writing or in the presence of witnesses or any law relating to registration of documents. Our attention has not been drawn to any law applicable in Bihar at the relevant time,

which requires an agreement of sale to be made in writing or in the presence of witnesses or to be registered. Therefore, even an oral agreement to sell is valid. If so, a written agreement signed by one of the parties, if it evidences such an oral agreement will also be valid.

18. In any agreement of sale, the terms are always negotiated and thereafter reduced in the form of an agreement of sale and signed by both parties or the vendor alone (unless it is by a series of offers and counter-offers by letters or other modes of recognized communication). In India, an agreement of sale signed by the vendor alone and delivered to the purchaser, and accepted by the purchaser, has always been considered to be a valid contract. In the event of breach by the vendor, it can be specifically enforced by the purchaser. There is, however, no practice of purchaser alone signing an agreement of sale. “

36. It is thus evident that a sale deed is a bilateral contract. Nevertheless the fact that the sale deed at Exhibit-54 was not signed by the purchasers would not per se lead to an inference that the purchasers had not joined in the execution of the instrument. Consequently, the sale deed at Exhibit-54 cannot be held to be invalid for the sole reason that the deed was signed only by the vendor and not by the purchasers.

37. The Defendants had also challenged the validity of the sale deed

on the ground that the purchasers being minors were not competent to contract. A perusal of the sale deed dated 02.12.1985 (Exhibit-54) indicates that the suit property was purchased by the Plaintiff No.1, who was stated to be 18 years of age and by the Plaintiff No.2 as the guardian of her minor son – Amrish. Though the sale deed states that the plaintiff no.1 was 18 years of age, however, it is in evidence that as on the date of the execution of the sale deed, the Plaintiff No.1 as well as his brother-Amrish were minors. It is to be noted that though the Plaintiff No.1 and his brother -Amrish were not competent to contract under Section 11 of the Contract Act, the sale deed at Exhibit-54 was not detrimental to their interest. Moreover, the sale deed was also executed by Plaintiff No.2 as a guardian of one of the purchasers. Hence, the fact that the purchasers were minors, would not per se affect the validity of the sale deed.

38. Be that as it may, the sale deed at Exhibit-54 has been registered about 25 years after its execution. Considering the fact that Defendant No.1 had specifically denied having executed the sale deed dated 02.12.1985 (exhibit-54) in favour of the Plaintiff No.1 and his brother, it was incumbent upon the plaintiffs to prove execution of the sale deed dated 02.12.1985 and its registration in accordance with the provisions of the Registration Act.

39. It is to be noted that PW1 was a minor as on the date of the execution of the document. Plaintiff No.2, who had represented one of the purchasers as a guardian, did not step into the witness box. The Plaintiffs have also not examined the scribe or the attesting witnesses to the sale deed to prove execution of the sale deed and payment of sale consideration. PW2 Advocate Mohan Joshi has identified his signature on the sale deed at Exhibit-54 wherein it is endorsed that he personally knew the vendor. He has admitted in the cross examination that he does not know the Defendant No.1 and that he is unable to identify him. He has further stated that he had not identified the vendor on the basis of any documents. The evidence of this witness does not indicate that the Defendant No.1 was personally known to him or that the Defendant No.1 had signed the sale deed in his presence.

40. PW3 who claims to have been present at the time of execution of the sale deed, has admitted in his cross examination that at the relevant time he was 7 years old and was studying either in 2nd or 3rd standard. Moreover, this witness has admitted that he had not seen the Defendant No.1 either prior or subsequent to 02.12.1985. He has admitted that he had not seen the sale deed executed in favour of the Plaintiffs. He was unable to give the details of the document, which was signed by Defendant No.1. He was unable to state the time when the sale deed

was executed and he was also unable to state as to how many persons had signed the said sale deed.

41. The Trial Court after appreciating the evidence has recorded a finding that the evidence of PW3 does not inspire confidence. The learned District Judge has ignored these observations without assigning any reasons and has relied upon selective evidence of PW3 totally overlooking the discrepancies highlighted by the Trial Court. There is no dispute that the first appellate court has jurisdiction to appreciate the entire evidence and either affirm, reverse or modify the findings of the Trial Court but such affirmation reversal or modification cannot be bereft of all reasoning. The judgment must reflect due application of mind and record findings supported by reasons.

42. In ***Santosh Hajari vs. Purshottam Tiwari, (2001) 3 SCC 179*** the Hon'ble Supreme Court has observed thus:-

“The appellate court has jurisdiction to reverse or affirm the findings of the trial Court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate Court must, therefore, reflect its conscious application of mind, and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed

by the parties for decision of the appellate Court. The task of an appellate Court affirming the findings of the trial Court is an easier one. The appellate Court agreeing with the view of the trial Court need not restate the effect of the evidence or reiterate the reasons given by the trial Court; expression of general agreement with reasons given by the Court, decision of which is under appeal, would ordinarily suffice (See Girijanandini Devi & Ors. Vs. Bijendra Narain Choudhary, AIR 1967 SC 1124). We would, however, like to sound a note of caution. Expression of general agreement with the findings recorded in the judgment under appeal should not be a device or camouflage adopted by the appellate court for shirking the duty cast on it. While writing a judgment of reversal the appellate court must remain conscious of two principles. Firstly, the findings of fact based on conflicting evidence arrived at by the trial court must weigh with the appellate court, more so when the findings are based on oral evidence recorded by the same presiding Judge who authors the judgment. This certainly does not mean that when an appeal lies on facts, the appellate court is not competent to reverse a finding of fact arrived at by the trial Judge. As a matter of law if the appraisal of the evidence by the trial court suffers from a material irregularity or is based on inadmissible evidence or on conjectures and surmises, the appellate court is entitled to interfere with the finding of fact (See Madhusudan Das Vs. Smt. Narayani Bai & Ors., AIR 1983 SC114). The rule is - and it is nothing more than a

rule of practice - that when there is conflict of oral evidence of the parties on any matter in issue and the decision hinges upon the credibility of witnesses, then unless there is some special feature about the evidence of a particular witness which has escaped the trial Judges notice or there is a sufficient balance of improbability to displace his opinion as to where the credibility lies, the appellate court should not interfere with the finding of the trial Judge on a question of fact.(See Sarju Pershad Ramdeo Sahu Vs. Jwaleshwari Pratap Narain Singh & Ors., AIR 1951 SC 120). Secondly, while reversing a finding of fact the appellate Court must come into close quarters with the reasoning assigned by the trial Court and then assign its own reasons for arriving at a different finding. This would satisfy the Court hearing a further appeal that the first appellate court had discharged the duty expected of it. We need only remind the first appellate courts of the additional obligation cast on them by the scheme of the present Section 100 substituted in the Code. The first appellate court continues, as before, to be a final Court of facts; pure findings of fact remain immune from challenge before the High Court in second appeal. Now the first appellate court is also a final court of law in the sense that its decision on a question of law even if erroneous may not be vulnerable before the High Court in second appeal because the jurisdiction of the High Court has now ceased to be available to correct the errors of law or the erroneous findings of the first appellate court even on questions of law unless such

question of law be a substantial one”

43. In the instant case, as noted above, the Trial Court having extensively dealt with the oral as well as documentary evidence has recorded a finding that the evidence of PW3 does not inspire confidence and further that the Plaintiffs have failed to prove execution of the sale deed at Exhibit-54 and payment of sale consideration. The learned District Judge has not assigned any reasons for discarding the discrepancies highlighted by the Trial Court and relying upon the evidence of PW3 despite the finding of the Trial Court that his evidence does not inspire confidence.

44. Learned District Judge has in a very cryptic manner reversed the findings of the Trial Court that the Plaintiffs have failed to prove execution of the sale deed and payment of consideration and has recorded a finding that the Plaintiffs have proved that they are the owners of the suit property on the basis of the sale deed dated 02.12.1985 (Exhibit-54), that the Plaintiffs have paid the sale consideration and that they are in continuous possession of the suit property. These findings are not based on evidence on record. The only reason for arriving at such finding is that the sale deed at Exhibit-54 states so. Learned District Judge has concluded that the sale deed at Exhibit 54 proves title as well as possession of the Plaintiffs in respect of

the suit property and that the burden was on the Defendants to prove that no such document was executed and that there was no payment of consideration. Relying upon the decision in ***Ram Saran Lal vs. Domine Kuer, AIR 1961 SC 1747***, learned District Judge has held that upon registration of the document, the title relates back to the date of the execution of the sale deed and not to the date of the registration.

45. In ***Ram Saran Lal*** the Hon'ble Supreme Court has observed that mere execution of the sale deed cannot make the same effective and registration thereof is necessary. It is held that Section 47 does not say when the sale would be deemed to be complete. It only permits a document when registered to operate from a certain date, which may be earlier than the date when it was registered. The Hon'ble Supreme Court held that the object of this section is to decide, which of two or more registered instrument in respect of the same property is to have effect.

46. Learned District Judge, has also relied upon the judgment of the Hon'ble Supreme Court in ***Satyapal Anand vs. State of Madhya Pradesh (2016) 10 SCC 767***, to substantiate the finding that once the document is registered, the legality or illegality of registration including the procedure of registration cannot be challenged except to seek

cancellation of the document before the competent civil court.

47. In ***Satyapal Anand*** (supra), the allotment order was canceled and the Extinguishment Deed was unilaterally registered. The Appellant in the said case had filed an Application before the Sub-Registrar to cancel the registration of Extinguishment Deed. The said application was rejected and the Writ Petition challenging the said rejection was also dismissed by the High Court. The questions inter alia considered by a three Judge Bench of the Hon'ble Supreme Court were -

(a) whether the Sub-Registrar (Registration) has authority to cancel the registration of any document including an extinguishment deed after it is registered ? Similarly, whether the Inspector General (Registration) can cancel the registration of Extinguishment Deed in exercise of powers under section 69 of 1908 Act ;

(b) Whether the Sub-Registrar (Registration) had no authority to register the Extinguishment Deed dated 09.08.2001 unilaterally.

(c) Whether the dictum in Thota Ganga Laxmi is with reference to the express statutory Rule framed by the State of Andhra Pradesh or is a general proposition of law applicable even in the absence of an express provision in that regard.

48. The Hon'ble Supreme Court held that the role of the Sub-Registrar

(Registration) stands discharged once the document is registered. In the absence of any express provision, the Sub-Registrar (Registration) as well as the Inspector General (Registration) has no powers to cancel the registration of any document which has already been registered. It is further held that the provisions under the 1908 Act do not require presence of both parties when such document is presented for registration before Registering Officer and that such a requirement cannot be considered as mandatory. It is held that the decision in Thota Ganga Laxmi was with reference to the express statutory rule framed by the State of Andhra Pradesh and is not a general proposition of law applicable in the absence of such express provision. The Hon'ble Supreme Court has observed that there is nothing to indicate that the Registering Officer is required to undertake a Quasi-Judicial inquiry regarding the veracity of the factual position stated in the document presented for registration or its legality if the tenor of the document suggests that it requires to be registered. The validity of such registered document can, in deed, be put in issue before a Court of Competent jurisdiction.

49. The proposition laid down in the case is that once the deed is registered, the Sub Registrar or the Inspector General, Registration has no authority to cancel the registration of the deed. It is further held that

the registering officer does not undertake quasi judicial inquiry as regards legality of the document or factual position as stated in the document presented for registration and that there is no embargo to register the cancellation deed/ Extinguishment Deed presented for registration unilaterally. This decision does not lay down the proposition that registration of sale deed is conclusive proof of its execution and that the act of registration is so sacrosanct that legality or illegality of registration including the procedure of registration cannot be questioned before the Competent Civil Court without seeking cancellation of the sale deed. The said decision is not applicable to the facts of the present case and the reliance on the same is totally misplaced.

50. There can be no dispute that once the sale deed is registered, its effect would be from the date of its execution. In the instant case, the sale deed has been registered albeit after 25 years. It is however to be noted that, mere registration does not confer or validate the title. In the case of ***Amar Nath vs Gian Chand 2022 SCC Online SC 102*** the Hon'ble Supreme Court has observed that :

“29. ...If the Registering Authority is satisfied about the identity of the person and that that he admits the execution of the document, it may not be a part of the Registrar's duty to enquire further. The registration by itself will not bring

the curtains down on questions relating to title of the property. The very purport of the Law of Registration is to usher in and maintain a transparent system of maintaining documents relating to property rights. It puts the world on notice about certain transactions which are compulsorily registerable Section 17 interalia.”

51. The Registering Officer has no authority to adjudicate upon the title of the executant verify the veracity of the contents of the document or the legality of the document. The duty cast upon the Registering Officer is only to satisfy himself as to the identity of the persons who appear before him and allege execution of document which is presented for registration. Once the Registering Officer is satisfied about the identity of the person and he admits execution of the document, he is bound to register the document and upon compliance of the provisions endorse a certificate under Section 60 of the Act. It would also be relevant to note that a certificate of registration under Section 60 is not conclusive proof of execution of the document, particularly when the execution of the document is itself in dispute. In ***Ramkrishan Ganpat Futane and ors. v/s. Mohammad Kasam and ors. AIR 1973 Bom 242*** the Division Bench of this Court has held that there is nothing in section 60(2) by which the endorsement made by the Registering Officer could be treated as substitute for the evidence which is contemplated by section 67 of the Evidence Act when a document which has been

executed by a person is required to be proved. It is held that section 67 of the Evidence Act provides that if a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the writing of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting. Referring to the decision in *Mruti v/s. Dattu AIR 1923 Bom 253(2)*, it was held that from the endorsement made by the Registering officer, that a certain person admitted the execution, it may be presumed that the person who admitted execution was the person who signed the deed but that does not itself prove who signed the deed. It is held that once the execution of the document is denied, proof as required by section 67 of the Evidence Act must be furnished.

52. In the instant case, as noted above, the Defendant No.1 had denied having executed the sale deed, which was registered 25 years after the date of alleged execution. Hence it was incumbent upon the Plaintiffs to prove not merely registration, but execution of the deed. It was necessary for the Plaintiffs to prove that the Defendant No.1 had assented to the terms in the sale deed, that he had received sale consideration and conveyed the title in their favour.

53. In this regard, the records reveal that the purchasers to the sale

deed at Exhibit 54 were minors. The Plaintiff nos.2 and 3- the parents of the purchasers, had not stepped into the witness box to prove execution of the sale deed. The said sale deed at Exhibit 54 indicates that the sale consideration of Rs.40,000/- was paid by cheque. The word 'cheque' was inserted after scoring out the word 'cash'. The sale deed does not mention the details of cheque such as the cheque number, date, details of the Bank or branch, etc. There is absolutely no evidence to establish that the purchasers who were minors or their mother, who was the guardian of one of the purchasers had independent source of income. The Plaintiff No.3, father of the Plaintiff No.1 had also not stepped in the witness box to prove payment of sale consideration, which is an essential requirement of 'Sale' within the meaning of Section 54 of the Transfer of Property Act.

54. Though the Plaintiffs have claimed that they were put in possession of the suit property, it is not in dispute that their names were not recorded in the survey records. In fact, the survey records indicate that pursuant to the sale deed dated 03.12.2010, executed in favour of defendant no.2, the name of the defendant no.2 was mutated in survey records under Mutation Entry No.668. Apart from the evidence of PW3, whose evidence is otherwise not trustworthy, the Plaintiffs have not adduced any evidence to prove that they were put in possession of the

suit property. The findings of the learned District Judge that the Plaintiffs have purchased the property on payment of sale consideration and that they are in continuous possession of the suit property are not based on evidence on record.

55. The genuineness of the sale deed was also challenged on the ground that the registration is not in consonance with the statutory provisions. Learned District Judge has failed to address this crucial question. It cannot be emphasized enough that registration is not a mere formality. The object of registration has been emphasized by the Hon'ble Supreme Court in ***Suraj Lamps and Industries Pvt. Ltd. vs. State of Haryana & Anr. (2009) 7 SCC 363*** It is held that registration provides safety and security to transactions relating to immovable property, even if the document is lost or destroyed. It gives publicity and public exposure to documents thereby preventing forgery and frauds in regard to transaction and execution of documents. Registration provides information to people who may deal with the property, as to the nature and extent of the rights which persons may have, affecting that property. In ***Veena Singh (dead) thr. Lrs. vs. District Registrar/ Additional Collector AIR Online 2022 SC 690*** the Hon'ble Supreme Court has also emphasized the necessity of strict compliance of the provisions of the Registration Act. It is held that :

“6 The Registration Act exists so that the information about document can be put into the public domain where it can be accessed by anyone in order to prevent forgeries and fraud and so that individuals can be aware of the status of the properties. If the interpretation conflating signing with execution is adopted, it would ensure that the Sub-Registrars, Registrars will continuously end up registering documents whose validity will inevitably be then disputed in a civil suit or a writ petition. While the suit or the writ proceedings continue, the documents would remain on the public records as a registered instrument, which has the potential to caused more disruption.”

56. The facts of the present case reveal that the sale deed was presented on 5.12.1985 and was registered in the year 2011. There is no explanation for the delay in registering the sale deed. Plaintiff No.1 has admitted that he had not presented the sale deed at Exhibit-54 for registration and has further stated that he does not know as to who had presented the sale deed for registration. PW2-Advocate Mohan Joshi has also admitted that he had not presented the sale deed for registration. There is absolutely no evidence on record to prove that the sale deed was presented for registration by any of the persons specified in Section 32 of the Registration Act.

57. The Plaintiffs have not adduced any evidence to prove that in

compliance with Section 34, the Defendant No.1 or his representative assigned or authorized agent had appeared before the Registering Authority or that the Registering Authority had conducted an inquiry as contemplated under Sub Section 3 of Section 34. There is no evidence on record to prove that the Defendant No.1 had appeared before the Registering Authority and admitted having signed or executed the document. There is no evidence on record to prove that the Registering Officer had satisfied himself that the sale deed was executed by the person who had purported to have signed the deed. The Trial Court observed that though summoned, the Plaintiffs had not examined the Sub-Registrar. The Trial Court took note of all these discrepancies and held that the Plaintiffs had failed to prove execution of the sale deed at Exhibit – 54. The learned District Judge has turned a blind eye to the fact that the sale deed had been registered in breach of the statutory requirements under the Registration Act.

58. Learned District Judge has ignored the fundamental principle that burden of proof in a suit or proceedings lies on that person, who would fail if no evidence at all were given on either side. The Plaintiffs having failed to discharge the initial burden, the Defendant No.1 was not required to step into the witness box to prove that he had not executed the sale deed, not received the sale consideration and had not put the

Plaintiffs in possession of the suit property. Learned District Judge therefore could not have decreed the suit for the reason that the Defendant No.1 had not stepped into the witness box or for having failed to prove a negative fact.

59. Under the circumstances, and in view of discussion supra, the Plaintiffs have failed to prove that the Defendants had executed the sale deed at Exhibit 54 and thus conveyed title in respect of the suit property in their favour. The findings recorded by the learned District Judge are not based on evidence on record and are perverse. Consequently, the impugned judgment cannot be sustained. Hence the appeal is allowed. The impugned judgment is quashed and set aside. The suit is dismissed.

. Civil application does not survive and hence stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)