

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****113****RSA-1114-2025(O&M)****Date of decision: 13.03.2026****Janpal Singh (since deceased) through his LRs****...Appellant(s)****Vs.****Radha Swami Satsang Beas & Others****...Respondent(s)***********CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present: Mr. Ashish Aggarwal, Senior Advocate with
Mr. Anmol Rattan Singh Dhillon, Advocate
Mr. Vishal Pundir, Advocate
for the appellant.

Mr. Rajesh Chander Kumar Rohra, Senior Advocate
Mr. Ritesh Khatri, Advocate
Mr. Saurabh Gupta, Advocate
Mr. Vikas Arora, Advocate
Mr. Lovekesh Mehta, Advocate
for the respondent No.1.

Mr. Manish Soni, Advocate
for respondent No.2(ii) to (vi).

*********NIDHI GUPTA, J.**

The plaintiff is in second appeal against the concurrent judgments and decrees of the learned Courts below whereby suit filed by the appellant for declaration and permanent injunction, has been dismissed by both the Courts below.



2. Brief facts of the case are that plaintiff is the son of defendant No.2/Darshan Singh. The appellant had filed the instant Civil Suit seeking declaration as co-owner in joint possession of the suit property which is stated to be Joint Hindu Family coparcenary property. It was averred in the plaint that plaintiff and defendant No.2 along with other children of defendant No.2 constitute Joint Hindu Family. Thus, plaintiff by virtue of his birth being a co-parcener, is co-owner in joint possession of the suit property, besides some other land owned and possessed and entered in the name of defendant No.2 as 'Karta'. The suit property as detailed in the plaint is total measuring 61 kanal 18 marla as per Jamabandi for the year 2000-01. Being co-parcener, the plaintiff has ownership rights over the suit property by birth and is co-owner in joint possession of the suit land and other land owned by defendant No.2 as 'Karta'.

3. It was further averred that defendant No.2 is suffering from mental illness and is not of sound disposing mind. It was alleged that he had been hypnotised by some of the followers of defendant No.1/Dera. Due to this, defendant No.2 had gifted land measuring 23 kanal 10 marla to the defendant No.1 vide way of Gift Deed No.2453/1 dated 21.02.2011. Again, vide Gift Deed dated 06.05.2011, defendant No.2 had gifted land measuring 16 kanal 9 marla to the defendant No.1. Finally, vide Sale Deed dated 29.09.2011, defendant No.2 had sold suit land measuring 21 kanal 19 marla for Rs.30 lakh to the defendant No.1; thereby disposing of the entire suit land



in favour of defendant No.1. The plaintiff alleged that the said Deeds of Transfer are illegal, null and void as defendant No.2 was not competent to transfer the suit land as the same was Joint Hindu Family coparcenary property of the plaintiff and defendant No.2. Moreover, Defendant No.2 was not in sound disposing mind. The above documents of Transfer are result of undue influence exerted by followers of defendant No.1 upon defendant No.2. Even the alleged consideration of Rs.30 lakh had never passed hands. In any event, defendant No.2 was not competent to alienate any specific killa number of the joint land. Further as defendant No.2 was not in possession of the suit land, no possession was delivered to the defendant No.1. The plaintiff had requested the defendants several times to get the aforementioned documents set aside and not to interfere in his possession over the suit property; however, the defendants had refused to accede to his request. Hence, present suit for declaration and permanent injunction was filed on 11.04.2012, seeking *"a decree for declaration to the effect that gift deeds dated 21-02-2011, 06-05-2011 and sale deed dated 29-09-2011 in favour of defendant no. 1 are illegal, null, void and not binding over the rights of the plaintiff over the suit property and a decree for permanent injunction as consequential relief restraining defendant no. 1 from interfering into the ,lawful and peaceful possession of the plaintiff over the suit property now and in future in any manner be passed with cost in favour of the plaintiff against the defendants."*



4. Upon notice, the defendant No.1 had appeared and resisted the suit by filing written statement questioning the maintainability of the suit as also the locus of the plaintiff. It was contended that the suit land was self-acquired property of defendant No.2 and not Joint Hindu Family or coparcenary property. It was further averred that defendant No.2 had contacted defendant No.1 and stated that he wanted to alienate suit land by way of Will in favour of defendant No.1. However, defendant No.1 had requested defendant No.2 to alienate suit land by way of Sale after receiving due sale consideration. But Defendant No.2 was not ready to take sale consideration from the Dera as he was a strong follower of the Radha Swami Satsang Beas. Accordingly, defendant No.2 of his own free will and volition had executed the two Gift Deeds in favour of defendant No.1. When the Dera authorities had discovered the same, they had asked defendant No.2 to make alienation by way of Sale Deed. Thereafter, defendant No.2 had executed the Sale Deed No.4221/1 dated 29.09.2011 for land measuring 21 kanal 19 marla in favour of the defendant No.1 for a sum of Rs.30 lakh. However, even out of the said sale consideration, defendant No.2 had again donated a sum of Rs.10 lakh to the defendant No.1. It was stated that the said Gift Deeds and Sale Deed had been executed by defendant No.2 of his own free will and without any pressure from any quarter. It was stated that the suit property is self-acquired property of defendant No.2 as the same had been purchased by defendant No.2 from his own funds after selling his property in Uttar



Pradesh. It was further averred that defendant No.2 had purchased sufficient land in the name of plaintiff as well; and even in the name of his father Gurdeep Singh. It was contended that other daughters of defendant No.2 were also willing to establish Satsang Ghar in the land of their father and for this reason also, defendant No.2 had alienated suit land in favour of defendant No.1. Electricity connection had been transferred in the name of defendant No.1; therefore, possession was with the Dera. Other averments made in the plaint were denied and dismissal of the suit was prayed for.

5. Defendant No.2, father of the plaintiff had filed a separate written statement along the same lines by questioning the maintainability of the suit; and locus standi of the plaintiff. It was denied that the suit land was Joint Hindu family coparcenary in nature; and it was stated that the same was his self-acquired property; and plaintiff had no right, title or interest in the same. It was further stated that both the Gift Deeds and Sale Deeds were executed by him in favour of defendant No.1 of his own free will and consent. He also denied suffering from any mental illness or problem. He denied that he was hypnotised or put under any undue influence by followers of defendant No.1 thereby forcing him to execute the aforesaid documents. Denying all other contentions dismissal of the suit was prayed for.

6. Replication was not filed.

7. From the pleadings of the parties following issues were framed by the learned trial Court vide order dated 19.02.2013:-



1. *“Whether the plaintiff is entitled to a decree for declaration and permanent injunction, as prayed for?OPP*
2. *Whether the plaintiff has no locus standi to file the present suit?OPD*
3. *Whether the plaintiff has not affixed the advalorem Court Fee?OPD*
4. *Relief.”*

8. Upon appraisal of pleadings and oral and documentary evidence adduced by the parties, the trial Court decided Issue No.1 against the plaintiff and in favour of defendants; Issue No.2 against the plaintiff and in favour of the defendants; Issue No.3 was not pressed by learned counsel for the plaintiffs and was accordingly disposed of. Consequently, vide judgment and decree dated 25.10.2017, learned Additional Civil Judge (Sr. Division) Kaithal had dismissed the suit. The civil appeal filed by the plaintiff was dismissed by the learned Additional District & Sessions Judge, Kaithal vide judgment and decree dated 05.02.2025. Hence, present second appeal by the plaintiff.

9. At the very outset, learned Senior Counsel for the appellant submits that the plaintiff-appellant is not pressing the issue that the suit land is ancestral in nature.

10. In respect of the other issues, it is *inter alia* submitted by learned Senior Counsel for the appellant that it is writ large on the record of the case that the impugned Gift Deeds and Sale deeds were procured by the defendant No.1 from defendant No.2 by exercising undue influence. Learned



Senior Counsel submits that it is the own admitted case of the defendant No.2 in his written statement that he/defendant no.2 was a “strong follower” of the defendant No.1-Dera. A recital to this effect is contained in the impugned Gift Deeds and Sale Deed as well. This fact has been admitted by defendant no.1 in its written statement also. It is contended that from these admissions, it is established that there existed a fiduciary relationship between the defendants; in wrongful exercise of which the defendant No.1 has exercised undue influence upon the defendant No.2 and got executed the impugned Gift Deeds and Sale Deeds by taking advantage not just of their fiduciary relationship but also of the mental instability and unsound mind of defendant No.2. It is reiterated that the recitals in the impugned Gift Deeds and the Sale Deed are unequivocal in stating that Darshan Singh was a “blind follower” of the defendant No.1-Society, as a result of which, he disposed of his entire property to secure mental peace, heavenly abode and other unseen benefits in favour of the Dera. These facts have been admitted by the defendant No.1 in their own written statement in acknowledging that defendant No.2 had desired to transfer suit land in favour of the defendant No.1. It is contended that therefore, it is proved that the impugned Gift Deeds and Sale Deeds are the result of undue influence.

11. Learned Senior Counsel further submits that given the fact that the father of the appellant was a geriatric person being 75 years old, and of unsound mind, while the respondent No.1-Society being a spiritual



organisation, the latter was in a dominating position. Moreover, father of the appellant was “blind follower” of the respondent No.1-Society. It is contented that in such a situation, a presumption would arise that the documents in question have been executed by exercise of undue influence by the Dera upon the defendant No.2. It is argued that in this situation, it is upon the respondent Dera to prove that no undue influence was exercised by the Dera in procuring the impugned documents. In support, learned Senior Counsel relies upon judgment of the Kerala High Court in **Philip Lukka v. Fraciscan Association (Kerala) (DB) : Law Finder Doc ID # 170245**, wherein it is held that: -

“Contract Act, 1872, Section 16 - Transfer of Property Act, 1882, Section 122 - Gift in favour of spiritual organisation - Court always requires strict proof of voluntary disposition in favour of spiritual organisation - Spiritual domination over mind of donor, his life long ill-health, lack of self will and manly capacity and blind and religious devotional frame of mind held, proved undue influence - Gift held to be vitiated by undue influence and fraud.
XXX

5. The plaint clearly averred that a priest by name Rev. Father Francis (who represents the 1st defendant-Franciscan Association) visited the plaintiff on 14-9-1974, when he was an in-patient in the St. Joseph Mission Hospital, Mannanam. The visit was with the 3rd defendant, Father of a highly placed Priest, who knew intimately the approaches and attitudes of the plaintiff towards life, religion and the priesthood, Representation had been made to him about the Association's



preparedness to look after him and his mother, on the property being gifted to the Association. The visit was repeated on 22-9-1974. It was represented to him that his brother-in-law was a consenting party to such an arrangement. He was, however, directed to keep the matter a secret. Other assurances had also been made in the event of the execution of the gift deed.

6. As to how the registration happened to be made at Karukachal, has been graphically and specifically detailed in the plaint. He was secretly taken by the 3rd defendant early morning on 27-1-1975 to Changanacherry. He was made to stay in the S.M. Boarding House there. The 3rd defendant had interdicted any communication of the object of the mission even to those who might meet him on the way. By about dusk, he was taken to the presence of the Arch Bishop, Changanacherry. Defendants 1 and 2 told him that all matters had been conveyed to the Arch Bishop and consequently the conversation between the plaintiff and the Arch Bishop was confined to an ordinary courtesy. In the next morning, defendants 1 and 2 took him in a car, to Karukachal and took him to a convent. From there he was taken to the Sub Registry Office and the document was got registered there without revealing its contents to him. When questioned about the necessity of registering the document, he was informed that the Sub Registrar's son was a former student of the S.H. High School and consequently it would be easier to have the registration in that Sub Registry Office. Apparently to make the story convincing, Fr. Mathew Njallathuweli was also there.

XXX

14. When a gift is made in favour of a spiritual organisation in such circumstances, the Courts always used to expect a high



degree of proof about the voluntary and genuine character of the transaction. That has been the case from the days of Allcard v. Skinner, (1887) 36 Ch D 145. As Lindley L.J. pointed out :

"The influence of one mind over another is very subtle, and of all influences religious influence is the most dangerous and the most powerful, and to counteract it Courts of equity have gone very far."

Not only the parties directly involved in the transaction but also purchasers with notice even for value, would have to face the serious and adverse consequences. Wilmot, C.J. observed in Maitland v. Irving, (1846) 15 Sim 437:

"Whoever receives (the gift must take it tainted and infected with the undue influence and imposition of the person procuring the gift; his partitioning and cantoning it out amongst his relations and friends will not purify the gift and protect it against the equity of the person imposed upon. Let the hand receiving it be ever so chaste, yet, if it comes through a corrupt polluted channel, the obligation of restitution will follow it."

The legal position is summed up in Cheshire and Fifoot's Law of Contract, Ninth Edition, Pages 291 to 294. In somewhat similar circumstance the Allahabad High Court set aside the transfer of property by a disciple in favour of his spiritual teacher who was in a position to dominate his will particularly having regard to the mental weakness induced by smoking of hemp. (See Manu Singh v. Umadat Pande, ILR 12 Allahabad 523).

15. The cumulative effect of the evidence in the case is so formidable that a clear case of undue influence is established by the plaintiff. In any view of the matter, the circumstances are such that the burden of establishing the validity of the



transaction was very heavy on the defendants, judged by the tests laid down by the Supreme Court in Afsar Shaikh v. Soleman Bibi, AIR 1976 Supreme Court 163. That burden has not been sustained at all."

(Emphasis added)

12. Learned Senior Counsel reiterates that in terms of the above judgment, the onus was upon the defendant No.1 to prove that the impugned documents have not been executed by Darshan Singh in favour of the defendant No.1 by exercise of undue influence upon the defendant no.2.

13. Ld. Senior counsel further argues that the illegality of the documents is made out from the fact that the defendant No.1 had failed to examine any attesting witness, or Scribe, of the said documents to prove that the same had been executed in accordance with law. Even the executant/defendant No.2 was not examined by the Dera, thereby casting shadow of doubt on the authenticity and veracity of said documents. It is argued that being a religious organisation, and therefore, in a dominating position, onus was upon the defendant No.1 to prove that the said documents had been executed without any undue influence, misrepresentation, or fraud. However, in the present case, the said Gift Deeds and Sale Deed have not been proved by defendant No.1 by leading any evidence on record. No witness has been examined to prove the said documents. As such, authenticity of the said documents is not established.



14. Learned Senior Counsel for the appellant further elaborates to submit that the defendant No.1 has failed to produce the best witness. It is contended that even though defendant No.2 had filed written statement supporting the case of the defendant No.1, yet defendant No.1 did not examine defendant No.2. Even the relatives who were allegedly present at the time of registration of the said documents, were not examined. Thus, the defendant No.1 has failed to prove the execution of the said documents. It is contended that in view of the fact that there are specific recitals in the Gift Deeds as well as in the Sale Deeds as well as in the written statement to the effect that Darshan Singh-defendant No.1 was a “strong follower” of the defendant No.1-Dera, therefore, the initial onus was on the defendant No.1 to prove the said documents. In view of the above-said admission, there is an automatic presumption that defendant No.1 being a spiritual organisation, has exercised undue influence upon its devotee/defendant No.2; which presumption has to be rebutted by defendant No.1 and show that no undue influence has been exercised. However, no such evidence has been led by the defendant No.1. Therefore, crucial evidence has been withheld by defendant No.1 and they have failed to discharge their initial onus.

15. It is further contended that DW5 Tarun Girdhar, alleged authorised representative of the defendant No.1 had deposed that wife and relatives of Darshan Singh were present when the impugned documents were scribed and typed; and when they went to the Office of Tehsildar their



photo was clicked. It is contended that despite this, no relative has been examined by defendant No.1. Wife of Darshan Singh, who had appeared as PW2, has supported the case of the plaintiff.

16. Ld. Senior counsel for the appellant again emphasises that there are recitals in the Gift Deeds that defendant No.2 was “blind follower” of Guru Sahiban; and that “.....*to receive love, affection & blessings, I am gifting to Guru.*” It is contended that in the written statement, it was the clear stand of the defendant No.1 that defendant No.2 had offered to transfer the suit land by way of Will, which was refused by defendant No.1. The Gift Deeds were executed without notice to defendant No.1. Yet, defendant No.1 got Sale Deed executed of the remaining land. Clearly therefore, the present is a case of undue influence.

17. Learned Senior Counsel further contends that the Society being a spiritual organisation, there is presumption of spiritual domination. In such a case, high degree of proof in terms of Section 16 of the Contract Act is required to prove the voluntary and genuine character of the Gift Deeds. But no evidence has been led by the defendant No.1 to rebut the above-said presumption and to prove the Gift Deeds and Sale Deeds.

18. Learned Senior Counsel further contends that in any event, the impugned documents were not admissible as only certified copies of the said documents have been produced by the defendant No.1. It is contended that as per Section 68 of the Evidence Act, the certified copies are per se not



admissible. A specific argument to this effect had been duly raised by the appellant before the learned First Appellate Court, however, the said argument has not been dealt with by the Additional District Judge. Learned Senior Counsel contends that the First Appellate Court being the Court of First Appeal, it was incumbent upon the Additional District Judge to deal with every argument raised by the appellant; as also examine all the evidence on record in minute detail; which has not been done. Therefore, provisions of Order 41 CPC have not been complied with.

19. Ld. Senior counsel further submits that the defendant No.1 is a Regd. Society. However, from a perusal of the Gift Deeds and the Sale Deeds it is apparent that there is no Resolution of the Society in favour of the person in whose favour the said documents were executed. There is no recital in the said documents regarding such a Resolution attached in the records of the Sub-Registrar nor any such Resolution has been placed on record before the Trial Court. Thus, it has not been proved that the documents have been executed in favour of respondent No. 1 which is a Registered Society. Even DW-5 Tarun Girdhar who has been examined by defendant-respondent No.1 admits that the documents i.e. the Gift Deeds and Sale Deed were executed in favour of one Sham Lal. However, there is no Resolution of the Society in favour of said Sham Lal. In this regard, Id. Senior counsel refers to the statements of DW-5 Tarun Girdhar and DW-1 Ravinder Singh to show that it has been admitted that no Resolution of the defendant No.1 has been passed.



Even in the Gift Deeds, there is no recital of any Resolution. No evidence has been produced by the defendant No.1 in respect of any Resolution. As the defendant No.1 is a Society, it is bound to act through Resolutions. However, only one Sham Lal had appeared at the time of registration of Gift Deed without any authorisation from the defendant No.1-Society. Even no Resolution has been produced before the Sub-Registrar. It is contended that therefore, the impugned documents have been executed without authority.

20. It is again submitted that it has been ignored that it is well settled law that a Regd. Society acts only through its Resolution, but there is not even an iota of evidence on the record that the persons shown to be present at the time of execution of the Gift Deeds and Sale Deed are in any way connected with defendant-respondent no.1 nor the names of these persons are mentioned in the recitals of these documents nor any Resolution has been annexed in the records of the Sub-Registrar. DW5 Tarun Girdhar, who is the authorised representative of the defendant No.1-Society, has accordingly pleaded total ignorance about any Resolution or registration. In this regard, learned Senior Counsel refers to the deposition of DW5 Tarun Girdhar, wherein he has admitted in his cross-examination that: -

“There was no resolution on my part to do work before resolution no. 40. It is wrong to suggest that no document was scribed in my presence. When the above said documents were scribed at the time Darshan Singh along with his wife and relatives came and got the documents typed and went to the



office of Tehsildar. After that his photo was clicked, signed and it was given to tehsildar for signatures. Payment was made in sale deed. I donot know that who was authorized by Dera for Documents. Volt Shyamlal got gift deed executed. I cannot bring his authority letter And for Sale deed area secretary Dharam Singh came. It is wrong to suggest that I have falsely deposed on behalf of Shyam lal and Area secretary..."

21. Ld. Senior counsel for the appellant further submits that even the Gift Deeds in question are not valid in law as the gift is not complete as the possession of the suit land is still with the plaintiff-appellant. Moreover, respondent No. 1-Society being a spiritual organization is not a juristic person and not competent to accept the Gift. The finding that the electricity connection was transferred in favour of respondent No.1 and thus possession of Dera stood established is also incorrect. Using its influence, respondent-Society got the electricity connection fraudulently transferred from the name of a third person during the pendency of the suit.

22. It is further contended that mere admission by defendant No.2 in the written statement to the effect that the alienation was voluntary and without any undue influence, is not sufficient to prove the same and has no value in the eyes of law and cannot be read in evidence.

23. It is lastly submitted that the learned courts below have lost sight of the fact that the alleged Gift Deeds as well as alleged Sale Deed have been specifically denied and none of the original Gift Deeds or Sale Deed



have been produced on the file and no case of secondary evidence has been made rather originals are admitted to be in possession of defendant No.1 nor any attesting witness to the Gift Deed has been produced nor the defendant No.2 has been produced in the witness box. Then none of the documents can be said to be proved rather the said transactions shall be considered to be a sham and bogus transaction and even the writer of the alleged Sale Deed has not been produced in the witness box.

24. In support of his contentions, learned Senior Counsel relies upon judgment of Hon'ble Supreme Court in **Keshav v. Gian Chand (SC) : Law Finder Doc ID # 1936001**, relevant extract of which is as under: -

“Validity of Gift deed - Voluntariness and animus necessary for execution of valid gift deed - Donee to discharge burden of proving that he exerted no influence for purpose of obtaining Gift deed.

Transfer of Property Act, 1882 Sections 122 and 123 Contract Act, 1872 Section 16 Suit for possession and permanent injunction - Validity of Gift deed - Held, voluntariness and animus necessary for execution of valid gift deed, which is to be examined on basis of evidence led by parties who can depose for truth - Further, when a done obtains any benefit from another, court would call upon person who wishes to maintain right to gift to discharge burden of proving that he exerted no influence for purpose of obtaining document - Therefore, order of High Court for setting aside decree of suit for possession and permanent injunction set aside.

XXX XXX XXX



8(iv) Hardei had denied execution of the gift deed before the revenue authority in 1989, when the plaintiffs had moved an application for mutation of the land in their favour. Application filed by the plaintiffs for mutation was rejected on 13th May 1989 in view of the contest and objection raised by Hardei. The plaintiffs did not challenge and question the rejection during the lifetime of Hardei....

9... ... The fact in issue in the present case is voluntariness and animus necessary for the execution of valid Gift Deed, which is to be examined on the basis of evidence led by the parties who could depose for the truth of this fact in issue... ..

When a person obtains any benefit from another, the court would call upon the person who wishes to maintain the right to gift to discharge the burden of proving that he exerted no influence for the purpose of obtaining the document. Corollary to this principle finds recognition in sub-section (3) to section 16 of the Indian Contract Act, 1872 which relates to pardanashin ladies. The courts can apply this principle to old, illiterate, ailing or infirm persons who may be unable to comprehend the nature of document or contents thereof. Equally, one who bargains in the matter of advantage with a person who places confidence in him is bound to show that a proper and reasonable use has been made of that confidence. The burden of establishing perfect fairness, adequacy and equity is cast upon the person in whom the confidence has been reposed. Therefore, in cases of fiduciary relationships when validity of the transaction is in question it is relevant to see whether the person conferring the benefit on the other had competent and independent advice.



10. The question whether a person was in a position to dominate the will of the other and procure a certain deed by undue influence is a question of fact, and a finding thereon is a finding of fact, and if arrived at fairly in accordance with the procedure prescribed, it is not liable to be reopened in second appeal..."

25. Learned Senior counsel further relies upon judgment of Rajasthan High Court in **Munna Kumari v. Umrao Devi, (Rajasthan)(Jaipur Bench)** : Law Finder Doc ID # 119466, wherein it is held that: -

"12. Learned trial court as already noticed decided issue No. 3 against the plaintiff on the ground that the plaintiff did not adduce any evidence that Nangi exercised undue influence over Sughan Chand and got the gift deed executed in favour of Munna Kumari. In my opinion, the trial court while arriving at this conclusion did not properly consider the law as to undue influence. In Afsar Sheikh s. Soleman Bibi, (1976)2 SCC 142), the Apex Court indicated that the as to undue influence in the case of a gift inter vivos is the same as in the case of a contract. It is embodied in Section 16 of the Indian Contract Act. The conditions stated in Section 16(1) must be pleaded with particularity and proved by the person seeking to avoid the transaction. Sub-section (2) is illustrative and sub-section (3) contains a rule of evidence. For the burden to shift on the donee both the conditions therein must be satisfied. Three stages for consideration emerge: firstly, whether the plaintiff or the party seeking relief on the ground of undue influence has proved that the relations between the parties to each other are such that one is in a position to dominate the will of the other, secondly, the influence amounted to "undue influence" , and thirdly, the



transaction is unconscionable. Then only the burden of proving that it was not induced by undue influence is to lie upon the person who was in a position to dominate the will of the other.

13. In Subhas Chandra Das Mushib v. Ganga Prosad Das Mushib, (AIR 1967 Supreme Court 878) it was held that if the plea of undue influence is raised the court must scrutinise pleadings to find out that a plea has been made out and that full particulars thereof have been given before examining whether undue influence was exercised or not. In para 9 it was observed :-

The law in India as to undue influence as embodied in Section 16 of the Contract Act is based on the English Common law as noted in the judgment of this Court in Ladli Prasad Jaiswal v. Karnal distillery Co. Ltd., (AIR 1963 Supreme Court 1279). According to Halsbury's Laws of England (Third Edition Vol. 17 P. 673 Article 1298) "where there is no relationship shown to exist from which undue influence is presumed, that influence must be proved." Article 1299 P. 674 of the same volume shows that "there is no presumption of imposition or fraud merely because a donor is old or of weak character." The nature of relations from the existence of which undue influence is presumed is considered at pages 678 to 681 of the same volume. The learned author notes at Page 679 that "there is no presumption of undue influence in the case of gift to a son, grand son or son-in-law, although made during the donor's illness and a few days before his death". Generally speaking the relation of solicitor and client, trustee and cesti que trust, spiritual adviser and devotee, medical attendant and patient, parent and child are those in which such a presumption arises. Section 16(2) of the Contract Act shows that such a situation can arise wherever the donee stands in a



fiduciary relationship to the donor or holds a real or apparent authority over him."

26. It is accordingly prayed that the present appeal be allowed and the impugned judgments and decrees be set aside as illegal, ultra vires and without jurisdiction.

27. Per contra, learned Senior counsel appearing for the respondent No.1 vehemently opposes the submissions advanced on behalf of the appellant and submits that the preliminary and primary premise on which the appellant had filed the present suit and had claimed ownership rights in the suit property was that the suit land was Joint Hindu Family coparcenary property; and therefore, the plaintiff being a coparcener/son of the defendant No.2/Karta, he had an entitlement in the suit property by birth. However, as the appellant has given up his contention that the suit land is Joint Hindu Family coparcenary property, the entire basis of the plaint falls; and therefore, the appellant is not competent to seek the declaration as prayed for as, he is a stranger to the impugned Gift Deeds and Sale Deed. In support, learned Senior Counsel relies upon judgment of this Court in **Jarnail Singh v. Gurmail Singh, (P&H) : Law finder Doc ID # 78661**, wherein it is held that stranger to a deed has no cause of action and locus to file the suit.

28. Learned Senior Counsel further submits that the executant of the impugned documents i.e. the defendant no.2, has not come forward to lay challenge to the said documents. In this scenario, reliance of the appellant



upon Section 16 of the Contract Act, is misplaced as it is the contractee who is authorised to question the contract; and not a third party i.e. the plaintiff here. Therefore, the appellant cannot resort to Section 16 of the Contract Act.

29. As regards possession, the plaintiff in the Civil Suit and evidence has stated that he is in possession. However, the attention of this Court is brought to the report of the Court-appointed Local commissioner who had submitted his report Ex.D-13, in which possession of the Dera is shown. Reference is also made to the photographs Ex.D-1 to Ex. D-11 which also reflect possession of the Dera, and the ongoing Dera activities.

30. It is contended that despite the above-said evidence on record that the plaintiff was not in possession of the suit property, the plaintiff had not amended the Civil Suit and had not sought to add relief of possession. It is argued that for this reason as well, the Civil Suit was not maintainable as, under Section 34 of the Specific Relief Act simplicitor suit for declaration without prayer for possession is not maintainable. Ld. Senior Counsel contends that therefore, on the preliminary legal pleas of locus of the plaintiff and maintainability of the suit, the present appeal deserves to be dismissed.

31. Further, even on merits, case of the plaintiff does not stand on a strong footing. In the present case, defendant No.2 had duly appeared before the Sub Registrar for registration of the Gift Deeds and the Sale Deed at three different times over a period of six months. Defendant No.2 had gone to the Office of the Sub-Registrar to do the needful. In this situation,



when the executant of the documents has not denied the documents, rather has supported them by not laying challenge to them at any stage, and by filing a written statement disputing and denying the case of the plaintiff, the burden is on the plaintiff to prove his pleaded case. It is contended that if the initial burden is not discharged, the burden would not shift to the defendant.

32. As regards undue influence, learned Senior Counsel contends that except for a bald averment in the plaint, no evidence whatsoever has been led by the plaintiff to substantiate his said plea. Even the plea of the plaintiff that defendant No.2 was of unsound mind remains unsubstantiated. It is contended that if defendant no.2 was in actual fact of unsound mind as alleged, then as per provisions of CPC, plaintiff was required to make an application and appoint a Guardian for defendant No.2. On the contrary, plaintiff has himself arrayed the defendant No.2 as a contesting party/defendant in the suit. Moreover, no evidence whatsoever in the form of examining a doctor or any medical evidence has been led by the plaintiff to remotely indicate in any manner that the defendant No.2 was of unsound mind. On the contrary, it is seen from the record that defendant No.2 is actively participating in all the proceedings before the Local Commissioner, in filing written statement, in being represented in the Civil Suit through counsel, thereby establishing that he was of clear and sound mind and had voluntarily and of his own volition executed the impugned documents.



33. As regards producing certified copies of the documents, learned Senior Counsel contends that first and foremost, the documents were not required to be proved by producing attesting witnesses in view of the fact that the said documents had not been denied by the executant i.e. defendant No.2. Yet the defendant No.1 had duly examined DW2 Dhir Singh, Registry Clerk, Office of Sub-Registrar, Pundri, who had stated that he had brought certified copies of the documents which are correct as per the original. It is contended that once the certified copies of the documents stood proved, the attesting witnesses were not required to be examined. It is reiterated that as the executant has not denied the documents, therefore, onus was not on the defendants to prove the documents and bring attesting witnesses.

34. As regards recital in Gift Deed that the possession has been given is sufficient, learned Senior Counsel relies upon judgment of Hon'ble Supreme Court in **"Asokan v. Lakshmikutty & Others"**(2007) 13 SCC 210, wherein it is held that:-

"16. While determining the question as to whether delivery of possession would constitute acceptance of a gift or not, the relationship between the parties plays an important role. It is not a case that the appellant was not aware of the recitals contained in deeds of gift. The very fact that the defendants contend that the donee was to perform certain obligations, is itself indicative of the fact that the parties were aware thereof. Even a silence may sometimes indicate acceptance. It is not necessary to prove any overt act in respect thereof as an express



acceptance is not necessary for completing the transaction of gift.

*17. In **Narayani Bhanumathi v. Karthyayani Lelitha Bhai** a learned Single Judge of the Kerala High Court stated the law thus:*

"If the earlier settlement deed was executed on an assurance that Defendants 2 and 3 will be looked after, that presupposes the knowledge of the gift by the donees and an understanding reached between them at the time of execution of the settlement deed which could be sufficient to support the plea of acceptance especially when there is no question of the donee getting possession of properties since there is reservation of right to enjoy the property in the donors during their lifetime.

The evidence bearing on the question of acceptance of the gift deed will have to be appreciated in the background of the circumstance relating to the execution of such a deed. There may be cases where slightest evidence of such acceptance would be sufficient. There may still be cases where the circumstances themselves eloquently speak to such acceptance. Normally when a person gifts properties to another and it is not an onerous gift, one may expect the other to accept such a gift when once it comes to his knowledge, since normally, any person would be only too willing to promote his own interest. Maybe in particular cases there may be peculiar circumstances which may show that the donee would not have accepted the gift. But these are rather the exceptions than the rule. It is then only normal to assume the rule. It is only normal to assume that the donee would have accepted the gift deed. One would have to look into the circumstances of the case in order to see whether acceptance could be read. Mere silence may sometimes be indicative of



acceptance provided it is shown that the done knew about the gift. Essentially, this is a question of fact to be considered on the background of circumstances of each case."

35. As regards mode of proof of Execution of Deeds, learned Senior Counsel relies upon judgment of Hon'ble Supreme Court in **Ishwar Dass Jain (Dead) through LRs v. Sohan Lal (Dead) through LRs (SC) : Law finder Doc IDA # 15129**, wherein it is held that:-

"13. We shall first deal with the proof of the certified copy of the deed of mortgage. So far as the mortgage deed is concerned, the plaintiff filed a certified copy and called upon the defendant to file the original. The defendant refused to do so. The plaintiff, therefore, proceeded to file the certified copy as secondary evidence under sub-clause (a) of Section 65 of the Evidence Act. This was certainly permissible. The mortgage is a document required to be attested by two attestors under Section 59 of the Transfer of Property Act and in this case it is attested by two attestors. The mode of proof of documents required to be attested is contained in Sections 68 to 71 of the Evidence Act. Under Section 68, if the execution of a document required to be attested is to be proved, it will be necessary to call an attesting witness. if alive and subject to the process of Court and is capable of giving evidence. But in case the document is registered - then except in the case of a will - it is not necessary to call an attesting witness, unless the execution has been specifically denied by the person by whom it purports to have been executed. This is clear from Section 68 of the Evidence Act. It reads as follows:



"Section 68: If a document is required by law to be attested, it shall not be used as evidence until one attesting witness atleast has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence :

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908, unless its execution by the person by whom it purports to have been executed is specifically denied."..."

36. As regards undue influence, learned Senior Counsel relies upon judgment of Hon'ble Supreme Court in **Raja Ram Vs. Jai Prakash Singh & Others (2019) 8 SCC 701**, wherein it is held that:-

*"10. The deceased undisputedly was over 80 years and above in age. The plaintiff pleaded that by reason of age and sickness, the deceased was unable to move and walk, with deteriorated eyesight due to cataract. The mental capacity of the deceased was impaired. The Advanced Law Lexicon by **P. Ramanatha Aiyar, 3rd Edn., reprint, 2009** defines impairment in relation to a human being as total or partial loss of a body function, total or partial loss of a part of the body, malfunction of a part of the body and malfunction or disfigurement of a part of the body. Except for a bald statement in the plaint that the deceased was mentally impaired there is no evidence whatsoever of his mental status. There can be no presumption with regard to the same only because of old age to equate it with complete loss of mental faculties by senility or dementia. Ageing is a process which*



affects individuals differently at distinguishable ages. The sale deed executed by the deceased in favour of one Babu Ram and Munshi Lal two years earlier in 1968 has not been assailed by the appellant on the ground that the deceased was devoid of the power of reasoning, because of mental impairment. There is no evidence of any such rapid deterioration in the condition of the deceased in these two years.

11. The deceased on account of his advanced age may have been old and infirm with a deteriorating eyesight, and unable to move freely. There is no credible evidence that he was bedridden. Hardness of hearing by old age cannot be equated with deafness. The plaintiff, despite being the son of the deceased, except for bald statement in the plaint, has not led any evidence in support of his averments. It is an undisputed fact that the deceased appeared before the Sub-Registrar for registration. It demolishes the entire case of the plaintiff that the deceased was bedridden. He had put his thumb impression in presence of the Sub-Registrar after the sale deed had been read over and explained to him. The deceased had acknowledged receipt of the entire consideration in presence of the Sub-Registrar only after which the deed was executed and registered. The wife of the deceased had accompanied him to the office of the Sub-Registrar. The sale deed being a registered instrument, there shall be a presumption in favour of the defendants. The onus for rebuttal lay on the plaintiff which he failed to discharge. Notwithstanding the finding of enmity between PW 2 and PW 3 with original Defendant 2, the first appellate court erred in relying upon these two witnesses by holding that they were independent witnesses and convincing. DW 1, though related was a witness to the sale



deed. His evidence in support of the events before the Sub-Registrar therefore has to be accepted. The plaintiff could have led evidence in rebuttal of the Sub-Registrar but he did not do so.

12. That leads us to the question of undue influence. The pleadings in the plaint are completely bereft of any details or circumstances with regard to the nature, manner or kind of undue influence exercised by the original defendants over the deceased, A mere bald statement has been made attributed to the infirmity of the deceased. We have already held that the deceased was not completely physically and mentally incapacitated. There can be no doubt that the original defendants were in a fiduciary relationship with the deceased. Their conduct in looking after the deceased and his wife in old age may have influenced the thinking of the deceased. But that per se cannot lead to the only irresistible conclusion that the original defendants were therefore in a position to dominate the will of the deceased or that the sale deed executed was unconscionable. The onus would shift upon the original defendants under Section 16 of the Contract Act read with Section 111 of the Evidence Act, as held in *Anil Rishi v. Gurbaksh Singh*, only after the plaintiff would have established a prima facie case. The wife of the deceased was living with him and had accompanied him to the office of the Sub-Registrar. The plaintiff has not pleaded or led any evidence that the wife of the deceased was also completely dominated by the original defendants.”

37. As regards burden of proof was on plaintiff to prove undue influence, learned Senior Counsel relies upon judgment of Hon’ble Supreme



Court in **Bellachi v. Pakeeran, (SC)** : Law Finder Doc ID # **188051**, wherein it is held that:-

"13. A concurrent finding of fact has also been arrived at that the appellant was not a person wholly incapable of understanding things. It was furthermore held that the plaintiff had sufficient funds for her own treatment as also for the treatment of her husband and thus the story that she was made to believe that she would be rendered financial assistance by some banks so as to enable her to meet the expenses for her husband's treatment, is not correct.

It was, furthermore, noticed that her husband as also her daughter (PW-2) were Government employees.

The said concurrent findings of the fact ordinarily are binding on the High Court while exercising its jurisdiction under Section 100 of the Civil Procedure Code.

*This Court in **Afsar Sheikh and Anr. v. Soleman Bibi and Ors.** reported in [1976 (2) SCC 142] held as under :*

"4. In his written statement, Afsar defendant denied the allegations of fraud and misrepresentation. He averred that his grandmother was the sister of the plaintiff's mother. The defendant's father died when he was an infant. The plaintiff brought him up as a son. Since his very infancy, the defendant has been living with the plaintiff, managing his affairs and treating him as his father. The defendant further stated that the plaintiff has transferred 10 to 12 bighas of land to his natural son and an equal area to his second wife. Out of love and affection, the plaintiff conferred a similar benefit on the defendant and voluntarily executed the hiba-bil-ewaz after receiving from the donee a dhoti as a symbolic consideration therefor. He denied that the plaintiff at the time of the gift was too old and infirm. According to him, the plaintiff was



not more than 75 years of age. He further averred that he was in possession of the suit lands ever since the execution of the hiba."

It was observed :

"20. It is well-settled that a question whether a person was in a position to dominate the will of another and procured a certain deed by undue influence, is a question of fact, and a finding thereon is a finding of fact, and if arrived at fairly, in accordance with the procedure prescribed. is not liable to be reopened in second appeal (Satgur Prasad v. Har Narain Das; Ladli Prasad Jaiswal v. Karnal Distillery Co. Ltd.)."

XXX

16. In a given case it is possible to hold that when an illiterate, pardanashin woman executes a deed of sale, the burden would be on the vendee to prove that it was the deed of sale was a genuine document. It is, however, a registered document. It carries with it a presumption that it was executed in accordance with law. Again a concurrent finding of fact has been arrived at that she was not an illiterate woman or she was incapable of understanding as to what she had done.

XXX

18. Furthermore both the courts below have held that the plaint does not contained any particulars of undue influence, fraud etc. The law does not envisage raising of a presumption in favour of undue influence. A party alleging the same must prove the same subject of course to just exceptions.

In M. Rangasamy v. Rengammal and Ors. [(2003) 7 SCC 683],
this court has held as under:-

"Further, a perusal of the plaint shows that the execution of Exhibits B-6 and B-7 has, in fact, not been disputed by the plaintiffs. The case set up by them is that



the first defendant, exercising dominating influence over his grandmother, got the two settlement deeds executed from her exploiting her old age, dim eyesight and mental condition. It has been further pleaded that the first defendant had a fiduciary relationship with his grandmother and, therefore, though normally it would be for a person who pleads undue influence to establish the said fact, but in view of this relationship, it is for the first defendant to prove that the gift deeds were the result of free exercise of independent will by the executant."

The said decision will apply in all fours in this case."

38. It is accordingly prayed that the present appeal be dismissed being meritless.

39. No other argument is made on behalf of the parties. I have heard learned Senior counsel and perused the case file in great detail. I find no merit in the submissions advanced on behalf of the appellant.

40. **Locus:**

The plaintiff had claimed title in the suit land on the positive assertion that suit land is Joint Hindu Family coparcenary land; and therefore, plaintiff by virtue of his birth is co-owner being coparcener along with Karta/ defendant no.2. Once the appellant has dropped this plea that the suit property is ancestral, the very foundation of his claim to the suit property as coparcener, goes. The very basis on which the appellant had brought the suit, no longer exists. Resultantly, the appellant cannot maintain the suit being stranger to the impugned transactions/documents.



41. A perusal of the plaint reveals that the Gift Deeds and the Sale Deed have been challenged by the appellant only on the basis of claiming right in the suit property as coparcener. The entire claim of the plaintiff over the suit property is based on the contention that the suit property is Joint Hindu Family coparcenary in nature. Once the said claim is withdrawn, the plaintiff becomes a stranger to the transaction. Resultantly, there is no lis/cause of action; and plaintiff can, therefore, no longer maintain the suit. The entire edifice on which the plaintiff has built his case is, that the suit property being coparcenary, plaintiff has right in it by birth. However, once the said claim itself is withdrawn by the plaintiff, he is left with no cause of action being a stranger to the registered Deeds. Therefore, plaintiff has no locus to challenge the same. There being no lis to the action, the suit is not maintainable. The principle in law is that competence to file suit is with one who has cause of action. Without cause of action, there is no lis. Once the pleading regarding ancestral nature of the property has been dropped, his entire claim to the suit property falls. Thus, suit of the appellant is prima facie not maintainable.

42. It is also to be noted that Darshan Singh/ defendant no.2, executant of the impugned documents has not challenged the Gift Deeds or the Sale Deed. On the contrary, vide his written statement Darshan Singh has resisted the suit of the plaintiff and has denied all his averments made in the plaint. Rather, Darshan Singh has actively participated in the registration of



the Deeds etc. In this situation, with regard to Locus, reference be made to judgment of this Court relied upon by learned Senior Counsel for the defendant No.1 in **Jarnail Singh supra**, wherein it is held that:-

“11. The learned first appellate Court has rightly observed that the said sale deed was executed on September 3, 1973 by Parampal Singh acting as a attorney of Harnam Kaur. Harnam Kaur died on April 20, 1975. During her life time, Harnam Kaur never challenged the aforesaid sale deed executed by her attorney. No grievance was ever made by her with regard to the non-receipt of the consideration. Thus, when Harnam Kaur had never made any grievance with regard to the validity of the aforesaid sale deed, then it is definitely not open to defendant, Jarnail Singh, who is stranger to the said sale deed to claim that the said sale deed was without any consideration or was invalid in any other manner. As a matter of fact, no meaningful argument has been addressed by the learned counsel appearing for the defendant-appellant to show that the said sale deed suffers from any infirmity.”

(Emphasis is mine)

43. Another judgment of this Court in **Parkash Kaur v. Surjit Kaur (P&H) : Law Finder Doc ID # 242631**, is also relevant, wherein it is held:-

“11. Since the whole case of the plaintiff/appellant is that there was no consideration or lack of consideration in the sale deed dated 23.04.1993, in the case of State of Punjab (supra) this Court has held that in case of lack of consideration, a stranger to the sale deed cannot challenge the sale on the ground that it is



without consideration or a paper transaction. Admittedly, Jaswant Kaur lived for another 1-2 years after the execution of the sale deed (Ex.D1) and never challenged it by herself during her lifetime."

(Emphasis is mine)

Possession:

44. The present Civil Suit is not maintainable also in view of the fact that it is established on record that the plaintiff is not in possession of the suit property. A declaratory suit without seeking relief of possession is not maintainable. In this regard, it may be pointed out that along with the suit, plaintiff had filed an application under Order 39 Rules 1 and 2 CPC seeking ad interim injunction. The defendant No.1 in its reply to the said application had denied possession of the appellant over the suit property. Accordingly, the Court had appointed Local Commission to determine the correct position on spot. The Local Commissioner has submitted his Report (Ex.D13 - at page 331 of the LCR) as per which the defendant No.1 was found to be in possession of the suit property. Local Commissioner has categorically reported that he had visited the spot on 02.05.2012 along with Photographer after giving prior notice to all parties. It is to be noted that the Memo of Presence (Ex.D14 - available at page 333 of the LCR) of the said Inspection is duly signed by Darshan Singh, below which in his own hand he has also written 'defendant No.2'. Even on the Memo of Notice (Ex.D15 at page 335 of the LCR) Darshan Singh has appended his signatures and 'defendant No.2'.



Thus, inspection of the suit property was carried out by the Local Commissioner in the presence of defendant No.2. The plaintiff had refused to affix his signatures upon the attendance sheet of the said report.

45. The photographs (Ex.D1 to Ex.D11 - at pages 183-193 of the LCR), which were taken at the time of Inspection on 02.5.2012 also clearly show the possession of the Dera. The photographs show that the Board of “Radha Swami Satsang Beas Fatehpur-Pundri” is installed on the land. The said photographs also reflect the presence of Sangat at the spot in large numbers; and that Satsang and other Dera activities are going on. It is not disputed that these photographs were taken on the date of inspection i.e. 02.05.2012. Thus, photographs were taken in the presence of Darshan Singh. Clearly therefore, Darshan Singh is an active participant in Dera activities which are being carried on, on the suit land. Consequentially, in the face of all this evidence, the plaintiff had withdrawn his application under Order 39 Rule 1 and 2 CPC as not pressed vide order dated 26.02.2013 (at page 635 of the LCR).

46. It is also to be noted that even in his evidence, plaintiff has not denied these photographs. In his deposition as PW1 (at page 512 of the LCR), plaintiff has stated that:-

“I have seen photographs Ex.D1 to Ex. D11 (Photographs objected to). These photographs are of same Dera, which land was given in donation Voltd. I have 1/3 share in the said land of Dera and 1/3rd share in the irrigation source of water. I have no knowledge in how much area Dera is constructed. The Dera at



present are cultivating 8 Acres of the land. I have no knowledge for how much period, Dera is cultivating the said land. I have no knowledge if I have told my counsel about the factum of cultivation of land by Dera and construction of Dera at the time of institution of the suit ...”

47. Similarly, mother of the plaintiff while appearing as PW2 has admitted in her cross-examination (at page 529 of the LCR) that Dera/defendant No.1 is cultivating the suit land, wherein she has stated as follows:-

“There was separate land in the name of my husband and my son. The land that my husband donated to the defendant No. 1, No dera (ashram) is built there. The Secretary of the Dera namely Taran Singh cultivates that land. I do not know if he cultivates 8 Acres of land or less than that. I still keep visiting Dera. I have been initiated from defendant Dera. My son, daughters, and husband have been initiated from defendant No.1 Dera. Nowadays, where there is dera, the value there is 40-50 lakh rupees per acre....”

48. Even PW3, who is an aunt of the plaintiff has admitted in her cross-examination that:-

“I am summoned witness. Plaintiff had called me to testify. I also visit to defendant Dera. No misdeeds happen in Dera. It had been four years since Dera has been built in the dispute land.”

49. From the above oral and documentary evidence, it is irrevocably established on record that the defendant No.1 is in possession of the suit land. It therefore, follows that simplicitor suit for declaration, without



seeking relief of possession is not maintainable. Despite acknowledging possession of the Dera over the suit land, the plaintiff had failed to amend the suit and include consequential relief of possession. It needs no belabouring that as per Section 34 of the Specific Relief Act, simplicitor suit for declaration without seeking consequential relief of possession is not maintainable. Thus, on account of this legal infirmity as well, suit of the plaintiff was not maintainable.

50. In this regard, reliance is placed upon judgment of the Hon'ble Supreme Court in **Executive Officer, Arulmigu Chokkanatha Swamy Koil Trust Virudhunagar v. Chandran, (SC) : Law Finder Doc ID # 828440**, wherein it is held that:-

"36. The plaintiff, who was not in possession, had in the suit claimed only declaratory relief along with mandatory injunction. Plaintiff being out of possession, the relief of recovery of possession was a further relief which ought to have been claimed by the plaintiff. The suit filed by the plaintiff for a mere declaration without relief of recovery of possession was clearly not maintainable and the trial court has rightly dismissed the suit. The High Court neither adverted to the above finding of the trial court nor has set aside the above reasoning given by the trial court for holding the suit as not maintainable. The High Court in exercise of its jurisdiction under Section 100 C.P.C. could not have reversed the decree of the courts below without holding that the above reasoning given by the courts below was



legally unsustainable. We, thus, are of the view that the High Court committed error in decreeing the suit.”

51. Also, to judgment of this Court in **Jeeto v. Santa Singh, (P&H) 2006(2) RCR(Civil) 547**, wherein it is held that:-

“7. A perusal of the proviso to Section 34 of the Specific Relief Act, 1963 clearly lays down that where the plaintiff has not sought the consequential relief of possession in a suit for declaration then such a declaration shall not be granted to the plaintiff.

8. In the present case the plaintiff/appellant has not sought the consequential relief of possession and, hence, a mere suit for declaration is not maintainable. As per the evidence led by the parties it is also clear that the possession of the suit land was not with the plaintiff on the date of filing of the suit.”

52. Further the Hon’ble Supreme Court in **Vasantha v. Rajalakshmi @ Rajam (SC) : Law Finder Doc ID # 2493976**, has held that:-

“24. We now proceed to examine whether the suit for declaration simpliciter was maintainable in view of Section 34 of the SRA, 1963.

XXX

33. Adverting to the facts of the present case, on a perusal of the plaint, it is evident that the plaintiff was aware that the appellant herein was in possession of the suit property and therefore it was incumbent upon him to seek the relief which follows. Plaintiff himself has stated that defendant no. 1 was in possession of the subject property and had sought to transfer possession of the same to defendant no.2, thereby establishing that he himself was not in possession of the subject property. We



are not inclined to accept the submission of the learned counsel for the respondent on this issue. We note that after the death of the life-estate holder in 2004, there was no attempt made by the original plaintiff to amend the plaint to seek the relief of recovery of possession. It is settled law that amendment of a plaint can be made at any stage of a suit 34), even at the second appellate stage.”

53. From the discussion on the above two legal issues it is clear that suit of the plaintiff was not maintainable. From the above it is also clear that Darshan Singh had participated in the inspection of Local Commission and had not questioned the report, and the factum of possession of defendant No.1 over the suit property as proved above. Even otherwise, in the Gift Deed dated 21.02.2011 (Ex.DW2/B), Gift Deed dated 06.05.2011 (Ex.DW2/A) and Sale Deed dated 29.09.2011 (Ex.DW2/C), there is a clear recital to the effect that possession had been handed over by defendant No.2 to defendant No.1.

Validity:

54. As regards the validity of the impugned documents, learned Senior Counsel for the appellant has been at great pains to establish that there existed a fiduciary relationship between the defendants in which the defendant No.1 had dominance over defendant No.2. To make good his point learned Senior Counsel has relied heavily upon the averments made in the Gift Deeds and Sale Deed by defendant no.2 to the effect that he is a ‘strong follower’ of the Dera. Plaintiff has also relied upon the admission of this fact by the defendant no.1 in its written statement. Only on this basis, plaintiff



has sought to contend that defendant no.1 had exercised undue influence upon Darshan Singh. Needless to say, the said assertion is tenuous to say the least. No specific incident, in fact not even one specific incident has been mentioned as to when, where, how, and in what manner has the defendant no.1 exercised in undue influence upon Darshan Singh. Only a bald assertion has been made that undue influence was exercised, which is not backed by any material whatsoever. The plaint has failed to disclose as to by whom, in what manner, when, where, was undue influence exercised by defendant No.1 over defendant No.2. All that has been stated in the plaint is that defendant No.2 had been “hypnotised” by some followers of Dera in the name of religion, God and spirituality and he was greatly unduly influenced and misrepresented by Dera followers and he was cheated. Besides lack of specificity, there is even no evidence whatsoever on record to substantiate the said averment. Thus, contention of the plaintiff that suit property was taken by defendant no.1 by exercising undue influence over Darshan Singh remains entirely unsubstantiated.

55. The Id. Senior counsel for the plaintiff has then sought to make this connection by submitting that the defendant no.1 being a spiritual organization and Darshan Singh being its ‘strong follower’ the former had dominance and control over the latter. Though there is nothing whatsoever on record to remotely indicate anything to this effect, however, Id. Senior Counsel has sought to prove this by relying upon judgment of Rajasthan High



Court in **Munna Kumari supra** (which has further relied upon judgment of the Supreme Court in **Subhash Chander (Supra)**, which has referred to judgment of the Supreme Court **Ladli Prasad Jaiswal (Supra)**) wherein it is held that *“Generally speaking the relation of solicitor and client, trustee and cesti que trust, spiritual adviser and devotee, medical attendant and patient, parent and child are those in which such a presumption arises. Section 16(2) of the Contract Act shows that such a situation can arise wherever the donee stands in a fiduciary relationship to the donor or holds a real or apparent authority over him”*.

56. It is my clear view that the reliance of the plaintiff upon the said general observation in a judgment is flimsy and tenuous to say the least. First and foremost the said general observation cannot be taken as a pronouncement of law. Moreover, a spiritual adviser is distinct from spiritual organisation. Furthermore, an artificial legal entity cannot be in a fiduciary relationship with a natural person.

57. It may be also be pointed out that all the judgments cited by the appellant are of no help to the appellant as each and everyone of those judgments are distinguishable on facts and law. In case of **Philip Lukka (supra)**, the facts of the case were entirely different inasmuch as in the said case categorical and specific averments had been made in the plaint, which were buttressed by cogent and comprehensive evidence to the effect that a particular priest had exercised undue influence over the donee. In the said



case specific instances had been mentioned when the said influence was exercised and the places where the said influence was exercised. In the present case, none of those facts apply. Rather to the contrary the donee in the present case is supporting the donation. Same is the situation with the case of **Keshav (supra)** relied upon by the appellant wherein Hardei, the donee had specifically denied the execution of the Gift Deed therein before the Revenue Authority. That is not so in the present case. As such, appellant can derive no benefit from the said relied-upon judgments as the same are wholly distinguishable on facts and law.

Certified Copies

58. As regards contention of the appellant that only certified copies of the documents were produced, the same is also liable to be rejected as the validity of the impugned documents stands duly proven from the evidence of DW2 who has stated as follows:-

“Stated that I am working as a Clerk in the office of the Sub Registrar, Pundri. I have come with the record regarding document No. 415/1 dated 06-05-11, 3453/1 dated 21-02-11, and 4221/1 dated 29-09-11. Ex. DW2/A to Ex. DW2/C are the certified copies issued by our office. They are correct according to the record....”

59. Even more importantly execution of the registered documents has not been denied by its executant, defendant No.2. In this view of the



matter, as per Section 68 of the Evidence Act, defendant No.1 is not required to 'prove' the execution of the registered documents by examining attesting witnesses etc. Section 68 of the Evidence Act clearly stipulates that except for a Will, when a document is attested by two persons "*and the execution is not challenged*" there is no requirement to call upon the attesting witnesses or the scribe of the document to prove the same. Plea of undue influence was available only with defendant No.2 who could have stated that documents were got executed from defendant No.2 under undue influence but it is not a disputed fact that till date all these three documents have not been challenged by defendant No.2 on any ground of fraud, undue influence etc. Perusal of written statement as well as cross-examination shows that it is apparently clear that he has duly shown his willingness and consent at the time of execution of Gift Deeds and Sale Deed. Merely for the reason that defendant No.2 was a devotee it cannot be said that any kind of undue influence was there at the time of execution of Gift Deeds and Sale deed.

Unsound Mind

60. As regards the allegation of the plaintiff that Darshan Singh was of unsound mind, there is not a smidgen of medical evidence brought on record by the plaintiff to this effect. Again, except for a bald averment, plaintiff had not adduced any evidence to prove by any record/document that any medical treatment is being given to defendant No.2 to prove that he was not in fit state of mind. PW3/real sister of defendant No.2 categorically deposed that defendant No.2 performs his daily routines properly. When



defendant No.2/donor has not raised any objection till date as to validity of Gift Deeds and Sale Deed, the plaintiff is not competent to challenge the same by taking frivolous grounds.

61. Before parting, it may also be pointed out that both the District Courts have returned concurrent findings of fact to the effect that the suit land was not ancestral in nature. Besides it may also be mentioned that plaintiff in his cross-examination as PW 1 has admitted that he is living separately from his father/defendant No.2 for the last 15 years. Similar, deposition has been made by PW2/mother of plaintiff and wife of Darshan Singh. Plaintiff/PW1 admitted in his cross-examination that his sisters i.e. the daughters of defendant No.2, had never challenged the Gift Deeds and Sale Deed in any Court of law. Therefore, this fact negates the averment of jointness of family between plaintiff and defendant No.2. Rather, there is categoric finding of fact that it is crystal clear that suit properties were self-acquired and defendant no.2 being absolute owner of the same was fully competent to alienate the same in whatever manner he likes. Hence, he was fully competent to execute Gift Deeds and Sale Deed. The plaintiff has no locus standi to challenge the alienation made by defendant No.2. It is but trite that if the suit property was ancestral then it could not devolve upon the plaintiff during the life-time of his father. In any event, stranger to a sale deed cannot challenge that sale deed is without consideration. The defendant no.2 did not challenge those Gift Deeds, Sale deed during his life time. No police



complaint is filed by defendant No.2 during his life time. Defendant No.2 never filed any suit during his life time seeking cancellation of Gift Deeds and Sale Deed. There was a gap of at least three months between every Deed. If defendant No.2 was hypnotised, after executing first Deed there was no need for him to execute other Deeds. No evidence has been led by plaintiff to prove any fraud.

62. The argument of plaintiff that defendant No.1 not being a juristic person was not entitled to enter into any transaction with defendant No.2, is beyond pleading. There is no pleading in the plaint that defendant No.1 is an unregistered society and therefore not competent to enter into any transaction. Revenue record show that suit property is recorded in the name of defendant No.1. Mother of plaintiff PW2 admitted that Dera is existing upon suit property of the last 4-5 years. The plaintiff also admitted that at present defendant No.1 is in cultivating possession of 8 acres of land. Therefore, it makes it clear that Gift Deeds were duly accepted by defendant No.1. The above findings and discussion are further supported by the voluminous case law on each issue, cited by Id. Senior counsel for the defendant no.1.

63. Accordingly, in view of the above discussion, present Second Appeal stands **dismissed**.

64. Pending application(s) if any also stand(s) disposed of.

13.03.2026
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes