

Before Amol Rattan Singh, J.

PIARA SINGH AND ANOTHER—Appellants

versus

SAUDAGAR SINGH AND OTHERS—Respondents

RSA No. 3962 of 2013

May 21, 2020

(A) *Transfer of Property Act, 1882 —S.41—Registration Act, 1908—S.17—Transfer of land—Plaintiff filed suit for granting possession of land on basis of sale deed executed by father of defendants—Plaintiff in turn asserted that sale deed executed by his father in his favour and sale deed in favour of plaintiff was result of undue influence and fraud—Father died within months of sale deed having been executed and transfer deed in favour of appellants was executed—However, even between execution of sale deed in favour of defendant and time of his death, no legal proceedings, either civil or criminal been initiated by him qua any fraud played upon him by plaintiff—There is no reason to disbelieve fact that father actually went to Registrars office to register sale deed in presence of witnesses in favour of plaintiff—No evidence shown to have been led on behalf of defendant that his father executed sale deed on account of any undue influence or any force exercised upon him by plaintiff.*

Held that no legal proceedings, either civil or criminal, are shown to have been initiated by him qua any fraud played upon him by the plaintiff and therefore I, like both the learned courts below, would find no reason to disbelieve the fact that he actually went to the Registrars' office on 04.08.2003 to register the sale deed in the presence of the witnesses, one of whom testified to that effect. On the other hand, no evidence is shown to have been led on behalf of the appellants that Joginder Singh executed the sale deed on account of any undue influence or any force exercised upon him.

(Para 28)

M.L. Saggar, Senior Advocate with Armaan Saggar, Advocate,
for the appellants.

T.S. Doabia, Senior Advocate with Sanjeev Roy, Advocate, for
respondent no.1.

AMOL RATTAN SINGH, J.

(1) This is the second appeal filed by two of the defendants in a suit instituted by the first respondent herein (plaintiff) by which he sought a decree granting possession of the land as has been fully described in the head note of the plaint and the judgment of the learned trial court.

He further sought a decree permanently injunctioning the appellants and their co-defendants (proforma respondents no.2 to 6 in this appeal), restraining them from alienating/creating an encumbrance qua the suit land, in any manner.

(2) The contention of the respondent-plaintiff (hereinafter referred to as the plaintiff) was that the original owner of the land, i.e. Joginder Singh (father of the appellants and respondent no.2 herein), had sold it to the plaintiff on 04.08.2003 vide a duly registered sale deed, for a consideration of Rs.12,08,000/- with possession of the land also delivered to the plaintiff.

He was thereafter stated to be in exclusive ownership and possession of the land in respect of which even a mutation had been entered in his favor in the revenue record.

However, thereafter Joginder Singh sold/transferred the suit land to the appellants on 14.08.2003 though he was not competent to do so, he already having earlier alienated the suit land to the plaintiff.

It was next stated that the defendants illegally and forcibly dispossessed the plaintiff from the suit property and upon them refusing/refuting his claim, the suit came to be filed on 07.09.2005.

(3) Notice having been issued, defendants no.1 and 3, i.e. the present appellants, appeared before the trial court and filed a written statement taking the usual preliminary objections of lack of *locus standi* etc., further contending that they along with defendants no.2, 6 and 7 were owners in possession of the property, with the plaintiff barred because of his own act and conduct from filing the suit.

The ownership of the suit land by Joginder Singh was admitted (prior to his alienation in favour of the appellants), with the appellants further having taken a plea of the suit being barred in terms of Order 2 Rule 2 of the CPC, as also Section 11 thereof.

It was contended that the plaintiff had previously filed a suit on 13.08.2003, titled as *Saudagarh Singh versus Piara Singh* and in

the said suit he had also moved an application under the provisions of Order 39 Rules 1 and 2 of the CPC, which was dismissed on 12.12.2003, the appeal against such dismissal also having been dismissed on 23.08.2005.

(4) On the merits of the plaint, it was contended that the sale deed dated 04.08.2003 was illegal, null and void, and without consideration, it having been executed as a result of fraud and misrepresentation made, taking undue advantage of the old age of Joginder Singh.

It was next contended that the market value of the suit property was more than Rs.23 lacs and consequently that sale deed was liable to be set aside.

Next, it was contended by the appellants in their written statement that Joginder Singh had executed a valid transfer deed in their favor (on 14.08.2003) of his own free will, with other properties situated in Village Qadian also having been transferred by him in favour of his sons.

The next contention of the appellants was that even at the time of the transfer deed being executed (in the appellants' favour), the plaintiff had not in fact got any mutation sanctioned qua the suit property on the basis of the sale deed dated 04.08.2003; and therefore the appellants were bona fide purchasers thereof, without notice, and were duly protected in terms of Section 41 of the Transfer of Property Act, 1881.

(5) A replication having been filed by the plaintiff to that written statement, the following issues were framed by the learned trial court:-

- (i) Whether the plaintiff is entitled to possession of suit property being owner, on the basis of registered sale deed dated 04.08.2003? OPP
- (ii) Whether the plaintiff is entitled to relief of permanent injunction as prayed for? OPP
- (iii) Whether the sale deed dated 04.08.2003 executed by Joginder Singh in favour of plaintiff is illegal, null and void and without consideration and that it is result of fraud and misrepresentation? OPD
- (iv) Whether the plaintiff has got no *locus standi* to file the

present suit?OPD

(v) Whether plaintiff is stopped by his act and conduct to file the present suit?OPD

(vi) Whether suit is not property valued for the purpose of court fee and jurisdiction?OPD

(vii) Whether suit is bad for misjoinder and nonjoinder of necessary parties?OPD

(viii) Whether the suit is barred under Order 2 Rule 2 and Section 11 of CPC?OPD

(ix) Whether defendants are bona fide purchasers under Section 41 of Transfer of Property Act?OPD

(x) Relief.”

(6) As per the judgment of the learned courts below the plaintiff examined himself and three other witnesses, including an attesting witness to the sale deed, the deed writer thereof, and one Niranjana Ram, Lambardar of Village Quadian, other than producing documentary evidence including the registered sale deed (Ex.P1).

On the other hand, the appellants-defendants examined appellant no.1, Piara Singh, as also one Kamaljit Singh who deposed that he knew Joginder Singh and his sons personally and that Joginder Singh had sold his property to his sons in his presence on 14.08.2003, vide a duly registered sale deed. A copy of that sale deed was also led in evidence as Ex.D1, with the original produced before the trial court.

(7) Having considered the aforesaid evidence, the learned trial court came to the conclusion that the sale deed Ex.P1 (referred to as Ex.P1/A at some places), was shown to be duly registered before the Sub-Registrar, Noormahal, with photographs of the parties and the witnesses thereof also pasted on it, and that one deed writer, one of the attesting witnesses and the plaintiff himself had all testified to its genuineness and consequently, it being a registered document, it was to be accepted to be genuine in terms of Section 17 of the Registration Act, read with Sections 91 and 92 of the Indian Evidence Act, with the defendants not having in any manner disproved the genuineness thereof.

Hence, it being a sale deed registered prior to the execution of the sale/transfer deed in favour of the appellants herein, Joginder Singh

had obviously no right or title left to the suit land so as to enable him to transfer it to his sons subsequently (after 04.08.2013).

(8) As regards the plaintiff having taken any advantage of the old age of Joginder Singh, it was found by that court that appellant no.1 in his cross-examination as DW2 had subsequently admitted that Joginder Singh was enjoying good and sound mental health and consequently the pleading to the contrary was not accepted by that court.

An argument also having been raised that the suit property was joint Hindu ancestral property, that contention was also rejected, on the ground that no such evidence had been led to prove the 'ancestral nature of the property'.

(9) Consequently, holding that even in terms of Section 47 of the Registration Act, 1908, a document that is duly registered "would operate" from the time that it would have commenced to operate even if it was not registered earlier, the sale deed executed by Joginder Singh in favour of the plaintiff was held to be very much valid, and the subsequent deed registered in favour of the appellants-defendants was held to have no value in the eyes of law.

Thus, issues no. (i) and (iii) were decided in favour of the plaintiff as a result of which even issue no.2 (as regards injuncting the defendants from alienating or interfering in the suit property), was also decided in favour of the plaintiff.

As regards issues no. (iv) to (viii), no evidence was found to have been led qua them and therefore they too were decided in favour of the plaintiff.

(10) As regards issue no.9, on the appellants-defendants being bona fide purchasers of the suit property in terms of Section 41 of the Transfer of Property Act, it was held that the said provision itself postulated that where a person is the ostensible owner of immovable property and transfers the same for consideration, the transfer would not be voidable on the ground that the transferor was not authorized to transfer it and even though the proviso thereto stipulates that a transferee who has taken reasonable care to ascertain that the transferor had the power to make the transfer, and in good faith purchases the property such subsequent transfer would be valid, yet, in the present case Joginder Singh being the father of the transferor of the subsequent transferees, that court further held that could not be presumed that they had no knowledge of the previous transfer made by him to the plaintiff.

(11) On the aforesaid findings, the suit of the respondent-plaintiff was decreed in his favour.

(12) The present appellants having appealed against that judgment before the learned Additional District Judge, Jalandhar, that court too, essentially on the same findings, dismissed the appeal, further observing that as regards the contention of the suit being barred under the provision of Order 2 Rule 2 of the CPC (issue no. viii), the pleadings under the previous suit instituted by the plaintiff not having been placed on record by way of any evidence by the appellants-defendants, it could not be presumed that the said suit was instituted on the same cause of action as the present one, and therefore even the said provision (Order 2 Rule 2 of the CPC), could not be 'invoked' by the appellants in their favour.

(13) Thus, this second appeal came to be filed, and when notice of motion was issued on 06.11.2013, *status quo* regarding possession (of the suit land) was ordered to be maintained, which order has continued to enure thereafter.

(14) Before this court, Mr. M.L. Sagar, learned senior counsel submitted that respondent no. 1-plaintiff had filed a suit seeking permanent injunction against the appellants on 13.08.2003, in which *status quo* was ordered to be maintained, on 16.08.2003.

He, however, against that order, filed an appeal, obviously not being satisfied by the order directing *status quo* to be maintained, which appeal he withdrew on 23.08.2005, after which he filed the present suit seeking possession of the suit land on 07.09.2005.

Learned senior counsel therefore contended that very obviously the respondent was actually never in possession of the suit land even after the sale deed dated 04.08.2003 was executed, because if that were so, he would have been satisfied with the order directing *status quo* to be maintained, thereby keeping him in possession of the land.

Hence, he contended that the recital to that effect (that possession had been handed over to the plaintiff), in the sale deed dated 04.08.2003, is wholly false, thereby putting a question mark on the authenticity and genuineness of the deed itself.

(15) He next submitted that no mutation entry qua any such transfer of property or possession thereof was entered in the revenue record during the pendency of the suit earlier filed by the plaintiff, seeking a decree of permanent injunction against the appellants

(restraining them from interfering in his possession of the suit land etc).

(16) Mr. Saggar next referred to the sale deed (Ex. P-1 before the learned courts below), from the lower court record, as also to the transfer deed, (Ex. D-1) in favour of the appellants, executed by their father who was 82 yearsold.

From Ex. P-1, he wished to point out that even the endorsement of the Sub-Registrar, behind the first page of that deed, showed that no consideration was paid by the plaintiff to the appellants' father, Joginder Singh, in the presence of the Sub-Registrar.

He next wished to refer to the cross-examination of the plaintiffs' own witnesses, i.e. PWs 1 and 2 as also of the plaintiff himself to submit that none of the other witnesses stated that any consideration had been paid by the plaintiff to Joginder Singh in front of them.

Learned senior counsel therefore contended that the alleged sale of the suit land was null and void on account of no consideration having been paid.

He next submitted that as per Ex. P-4, the plaintiff obtained a loan of Rs. 2,00,000/- on 02.09.2003, i.e. almost one month after the sale deed dated 04.08.2003 was registered, which further shows that actually no consideration was paid at the time that the deed was executed, thereby making it a sham transaction.

Mr. Saggar also submitted that no other proof of any source of income from which Rs. 12,08,000/- could have been paid towards the saleconsideration, was led by the respondents.

Mr. Saggar then referred to Section 54 of the Transfer of Property Act, 1882, to submit that a valid sale of immovable property above the value of Rs. 100/- must necessarily be by way of a registered instrument and therefore, read with Section 58 of the Registration Act, 1908, if there is no endorsement of any consideration paid for the transaction, it would mean that the sale transaction is void.

In that context, he pointed to clause (c) of the Registration Act, 1908, by which it is stipulated that any payment of money made in the presence of the registering officer must be endorsed on the document by that officer.

(17) Mr. Saggar next submitted that even as per the revenue official ('*Patwari*') who testified in favour of the appellant as DW-1, the Collectors' rate at the relevant time, qua the suit property, was Rs.

22,52,250/- whereas the sale consideration shown in the document Ex. P-1 was only Rs. 12,08,000/-, thereby making it a completely sham transaction.

In this context, Mr. Saggar also wished to point to Ex. D-4 of the lower court record.

(18) In support of his arguments, learned senior counsel relied upon the following judgments:-

- (i) *S. Parameswar versus Balasubramanian and others* (Madras High Court, co-ordinate Bench)¹;
- (ii) *Vidhyadhar versus Mankikrao and another*²;
- (iii) *Smt. Ind Kaur versus Tara Singh and others* (co-ordinate Bench of this court)³ and
- (iv) *Bhartu (deceased) through his LRs versus Nawal alias Chhotey (deceased) through LRs and others*⁴.

(19) Thus, Mr. Saggar submitted that both the learned courts below have completely erred in interpreting/ignoring the relevant provisions of law and consequently, those judgments deserve to be set aside and the suit filed by the plaintiff dismissed.

(20) Per contra, Mr. T.S. Doabia, learned senior counsel appearing for respondent no. 1 (plaintiff) at the outset relied upon a judgment of the Supreme Court in *Bai Hira Devi and others versus Official Assignee of Bombay*⁵ to submit that documentary evidence cannot be 'overruled' by oral evidence and consequently, the sale deed dated 04.08.2003 having been duly proved to be a written, registered document, any oral evidence contending that the sale transaction is a sham transaction, has to be completely ignored.

(21) Mr. Doabia next submitted that no issue was framed, or was sought to be framed, on the sale consideration being below the Collectors' rate and in fact no cross-examination in that regard was conducted by any question put to the plaintiff.

¹ 2008 (7) RCR (Civil) 955

² (1999) 3 SCC 573

³ Law Finder Doc Id# 66768

⁴ AIR 2012 Allahabad 91

⁵ AIR 1958 SC 448

In that context, he also submitted that if the document was under-valued, it was for the Sub-Registrar to refer it to the Collector to declare the transaction to be null and void on that ground, i.e. on account of the registration not being valid due to less stamp duty paid; however, no such reference was made by the Sub-Registrar and consequently, in any case, at a subsequent stage, no such objection can be taken that the consideration was less than the Collectors' rate, or that the deed was under-valued to avoid stamp duty.

(22) Mr. Doabia next wished to refer to the cross-examination of the plaintiff (at page no. 144 of the record of the trial court), to contend that in fact Joginder Singh was not on good terms with the appellants, i.e. his sons, and consequently, he had sold the suit land to the plaintiff.

He also wished to point to a document, Mark-A (at page no. 243 of the record of the trial court), which he contended was a suit filed by the late Joginder Singh against his sons, i.e. the present appellants, on 06.09.2003, seeking a declaration to the effect that he was the owner of various properties including the suit land.

Thus, he submitted that though that suit eventually was not followed up on account of the death of Joginder Singh, yet, it proved that he was not on good terms with the appellants.

(23) Mr. Doabia next referred to the statement of DW-1 Kamaljit Singh, '*Numberdar*', wherein, though he claimed to have known Joginder Singh well, however he admitted that he did not know about his last days or whether he had died at the house of his daughter.

Thus, Mr. Doabia submitted that the very fact that Joginder Singh did not die in the house in which his sons were living but died in fact where his daughter was living, would show that the relations between the appellants and their father were very strained and consequently, it was not surprising that he had sold the suit land to the plaintiff.

Learned senior counsel next referred to the cross-examination of the appellant Piara Singh wherein he even refused to recognize the photograph of his father on the sale deed Ex. P-1.

Next in that very context, Mr. Doabia referred to a part of paragraph 1 of the reply on merits in the written statement of the appellants (to the plaintiff), wherein they actually admitted to at least a temporary rift between Joginder Singh and themselves by contending that in any case he would not have sold off joint family ancestral property on account of any such rift/annoyance.

(24) Learned senior counsel next submitted that in any case the property was never proved to have been ancestral property, and in fact no arguments to that effect have been also raised before this court on behalf of the appellants, obviously, in view of the fact that no such documents were led to prove any such nature of the property.

Mr. Doabia, therefore submitted that the appeal be dismissed.

(25) In rebuttal to the aforesaid arguments, Mr. Saggar, learned senior counsel appearing for the appellants, submitted that as regards the contention that oral evidence cannot override documentary evidence, Sections 91 and 92 of the Evidence Act, 1872, only create a bar on any oral evidence to overturn a written document. However, the validity of even a written document can be challenged and disproved by way of another written document and consequently, with Joginder Singh having transferred the suit land along with other properties to his sons on 14.08.2003, i.e. within 10 days of the alleged sale made on 04.08.2003, the bar contained in those provisions cannot come to the aid of the plaintiff.

Therefore Mr. Saggar reiterated that in fact with the learned courts below not having appreciated the matter in its proper perspective as per the provisions of law, the appeal deserves to be allowed.

(26) Having considered the matter, I find myself unable to interfere with the judgments and decrees issued by both the learned courts below, despite Mr. Saggars' strenuous and sincere arguments on behalf of his clients, i.e. the appellants.

(27) The argument that the sale reflected in the agreement dated 04.08.2003 is not a valid sale on account of no proof of consideration having been paid is not acceptable in my opinion, in view of the fact that at no stage did Joginder Singh, i.e. the father of the appellants refute the factum of payment having been made to him, in terms of the said sale deed.

(28) No doubt, Joginder Singh died within a month or so of that sale deed having been executed (as per the appellants) and the transfer deed in favour of the appellants was executed on 14.08.2003.

However, even between 14.08.2003 and the time of his death, no legal proceedings, either civil or criminal, are shown to have been initiated by him qua any fraud played upon him by the plaintiff and therefore I, like both the learned courts below, would find no reason to disbelieve the fact that he actually went to the Registrars' office on

04.08.2003 to register the sale deed in the presence of the witnesses, one of whom testified to that effect.

On the other hand, no evidence is shown to have been led on behalf of the appellants that Joginder Singh executed the sale deed on account of any undue influence or any force exercised upon him.

(29) In fact the appellants, in paragraph 1 of their written statement (as pointed out by Mr. Doabia), having tacitly admitted to a “temporary annoyance”, would show indeed that all was not well between them and their father.

Though the factum of a suit filed by Joginder Singh against the appellants was never proved by way of a duly exhibited plaint filed by him, yet, that document being a marked document on the record of the trial court, and nothing having been pointed out even to this court that no such suit was actually filed by him, would again suggest that all things were not well between the appellants and their father up-till at least 04.08.2003, when he alienated the suit property in favour of the plaintiff.

The fact that he again included the same suit property in the subsequent deed dated 14.08.2003 executed in favour of the appellants, (i.e. his sons), along with other properties owned by him, cannot take away the fact that he had already alienated at least that property on 04.08.2003 and therefore had no right to again alienate something which he voluntarily lost interest in, 10 days earlier.

(30) This is further required to be seen in the light of the fact that the learned trial court has specifically referred to the fact that the registered sale deed, duly endorsed with the stamp and signatures of the Sub-Registrar, carries photographs of the vendor and the vendee, i.e. Joginder Singh and the plaintiff, and even though appellant no. 1 in his cross-examination refused to identify his father in that photograph, or denied it was his photograph (as contended by learned senior counsel for respondent no. 1-plaintiff), does not actually disprove that fact, because no evidence whatsoever, either by way of any other photograph, or even by way of the oral testimony of anyone else, was led by the appellants to disprove the identity of the man in that photograph on the sale deed (to be Joginder Singh).

Hence, as regards the factum of the sale deed having been executed by Joginder Singh on 04.08.2003 in favour of the respondent-plaintiff, I find no reason to interfere with the findings of the learned courts below.

(31) Coming then to the argument of Mr. Saggar that even Sections 91 and 92 of the Indian Evidence Act, 1872, have no application to the present case because the transfer deed dated 14.08.2003 in favour of the appellants is also a written and registered document, I cannot agree with that contention also, in view of the fact that it is not that document which is doubted in the present *lis* by the appellants but the earlier document dated 04.08.2003.

Hence, though the inference that the appellants wish this court to draw is that because in the second deed Joginder Singh had transferred the suit land to them and therefore the first deed is not believable, I cannot draw that inference keeping in mind the entire circumstances of the case. That is to say, that with the identity of the person who executed the sale deed dated 04.08.2003 by way of a registered document duly testified to by the attesting witness thereto and the factum of the registration of that document also not having been disproved, then even in terms of Section 92 of the Indian Evidence Act, 1872, as regards its execution and registration, it cannot be either ignored or held to be disproved simply because, subsequently, the executor is shown to have executed another document transferring the same land (along with other land) to the appellants.

The appellants would have to strictly disprove the execution of the first document by showing that either Joginder Singh was not in a sound mind when he executed it, or that he had been forced to execute it, or that in fact it was not he who executed it at all.

(32) As regards the last part, it has already been discussed immediately hereinabove that the appellants could not prove in any manner that it was not Joginder Singh who had executed it.

As regards any unsoundness of mind, the learned trial court in the latter part of paragraph 9 of its judgment, has specifically recorded a finding that appellant no. 1, in his cross-examination as DW-2, specifically admitted that Joginder Singh was enjoying good mental and physical health till his death.

Very obviously, the appellants have also relied upon the sale deed executed by Joginder Singh on 14.08.2003 in their favour, without alleging any unsoundness of mind at that stage.

Hence, as regards any temporary unsoundness of mind 10 days earlier, they were required to strictly prove that by way of any cogent evidence led, which they obviously did not, as nothing to that effect has been pointed out to this court.

Coming then to whether he was forced to execute the sale deed against his will, again no evidence whatsoever has been shown to this court, as may have been led by the appellants to try and prove that fact.

Consequently, the finding of the learned courts below that the sale deed dated 04.08.2003 in favour of the plaintiff, was validly executed by Joginder Singh, with the said document duly registered, I find no ground to upset such finding.

(33) Coming next to Mr. Saggars' argument that the sale consideration, even if paid, was highly inadequate in the face of the Collectors' rate testified to by a revenue official. Though otherwise that argument may have been of great significance, however, to repeat, with Joginder Singh never having raised a finger to say that he had not been paid the consideration shown to have been paid in the sale deed, the contents of which he admitted before the Sub-Registrar (as per the endorsement behind the first page), or that he was paid less than the market value, I would find it difficult to hold that the sale transaction is not valid on that ground. Further, as Mr. Doabia has correctly pointed out, that if there was any under-valuation of the suit land, in terms of the consideration shown to be paid in the sale deed, that was for the Sub-Registrar to object to and to forward that objection to the Collector, in terms of Section 47-A of the Indian Stamp Act, 1899.

That not having been done, it would not lie in the mouth of the appellants to raise an objection on inadequate consideration paid for the said land, they not being the owners thereof but with their father being such owner.

(34) Coming then again to the issue of no consideration having been paid, Mr. Saggar relied upon a judgment of the Supreme Court in *Vidhyadhars' case* (*supra*), from which he specifically pointed to paragraphs 20 and 21 (Law Finder edition), which read as follows:-

“20. In *Lal Achal Ram versus Raja Kazim Hussain Khan*, (1905) 32 Ind App 113, the Privy Council laid down the principle that a stranger to a sale deed cannot dispute payment of consideration or its adequacy. This decision has since been considered by various High Courts and a distinction has been drawn between a deed which was intended to be real or operative between the parties and a deed which is fictitious in character and was never designed as a genuine document to effect transfer of title. In such a situation, it would be open even to a stranger to impeach the

deed as void and invalid on all possible ground. This was also laid down in *Kamini Kumar Deb versus Durga Charan Nag*, AIR 1923 Calcutta 521 and again in *Saradindu Mukherjee versus Sm. Kunja Kamini Roy*, AIR 1942 Calcutta 514. The Patna High Court in *Jugal Kishore Tiwari versus Umesh Chandra Tiwari* AIR 1973 Patna 352 and the Orissa High Court in *Sanatan Mohapatra versus Hakim Mohammad Kazim Mohammad* AIR 1977 Orissa 194, have also taken the same view.

21. The above decisions appear to be based on the principle that a person in his capacity as a defendant can raise any legitimate plea available to him under law to defeat the suit of the plaintiff. This would also include the plea that the sale deed by which title to the property was intended to be conveyed to plaintiff was void or fictitious or, for that matter, collusive and not intended to be acted upon. Thus, the whole question would depend upon the pleadings of the parties, the nature of the suit, the nature of the deed, the evidence led by the parties in the suit and other attending circumstances. For example, in a landlord tenant matter where the landlord is possessed of many properties and cannot possibly seek eviction of his tenant for bona fide need from one of the properties, the landlord may ostensibly transfer that property to a person who is not possessed of any other property so that that person, namely, the transferee, may institute eviction proceedings on the ground of his genuine need and thus evict the tenant who could not have been otherwise evicted. In this situation, the deed by which the property was intended to be transferred, would be a collusive deed representing a sham transaction which was never intended to be acted upon. It would be open to the tenant in his capacity as defendant to assert, plead and prove that the deed was fictitious and collusive in nature. We, therefore, cannot subscribe to the view expressed by the Privy Council in the case of *Lal Achal Ram* (supra) in the broad terms in which it is expressed but do approve the law laid down by the Calcutta, Patna and Orissa High Courts as pointed out above.”

(35) Without a doubt, their Lordships have held in the said judgment that not only the executor of the document but any other

litigant can also raise a legal plea on a document not being valid for any reason. However, that principle laid down has been qualified by also observing that the whole question would depend upon the pleadings of the parties, the nature of the suit, the nature of the deed and the evidence led by the parties, along with any attending circumstances.

This court has already held hereinabove that the factum of the sale deed having been actually executed by and registered at the instance of Joginder Singh, has not been disproved in any manner by the appellants. Hence, with him obviously willingly having accepted the fact written in the sale deed that he had received a consideration of Rs. 12,08,000/-, his sons cannot be heard to say that he was not paid any consideration.

(36) Coming to the next limb of that argument by Mr. Saggar, in the context of Section 54 of the Transfer of Property Act, 1882, and Section 58 of the Registration Act, 1908.

Those provisions, and Section 10 of the Indian Contract Act, 1872, read as follows:-

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

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

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

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

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

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

It does not, of itself, create any interest in or charge on such property.”

Section 58 of the Registration Act, 1908:-

“58. Particulars to be endorsed on documents admitted to registration.—(1) On every document admitted to registration, other than a copy of a decree or order, or a copy sent to a registering officer under section 89, there shall be endorsed from time to time the following particulars, namely:—

(a) the signature and addition of every person admitting the execution of the document, and, if such execution has been admitted by the representative, assign or agent of any person, the signature and addition of such representative, assign or agent;

(b) the signature and addition of every person examined in reference to such document under any of the provisions of this Act; and

(c) any payment of money or delivery of goods made in the presence of the registering officer in reference to the execution of the document, and any admission of receipt of consideration, in whole or in part, made in his presence in reference to such execution.

(2) If any person admitting the execution of a document refuses to endorse the same, the registering officer shall nevertheless register it, but shall at the same time endorse a note of such refusal”.

(Emphasis applied here only)

Section 10 of the Indian Contract Act, 1872:-

“All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.”

Nothing herein contained shall affect any law in force in India, and not hereby expressly repealed, by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents.”

(37) Obviously, it need not be even said here, that no sale or contract is complete without consideration being paid; yet, this court

cannot ignore the fact that the stamped endorsement behind the sale deed dated 04.08.2003 (Ex. P-1, it having been pointed out from the record of evidence led before the trial court), (in Gurmukhi/Punjabi), reads to say that the executor of the document has understood it and admits it to be true. (Even though the stamp is not fully legible in the copy of Ex. P-1 which is available with this court, the words “*Sunke Samajhke Theek Parvan Keeta*”, are very clearly visible, along with the hand- written words, “Joginder Singh”).

Thus, with the sale consideration shown to be Rs. 12,08,000/- also very clearly visible on the first three pages of the said document, this court would not be able to hold, even in the context of S. 58 of the Registration Act, that no consideration was paid, or that Joginder Singh did not admit to such payment having been received by him.

[Note: It needs to be noticed here that Mr. Saggar had submitted before this court that the sale consideration paid was only Rs.12,800/- . However, a perusal of Ex.P-1 shown that the amount of consideration shown therein is Rs.12,08,000/-. Hence, learned Senior Counsel has inadvertently read it to be Rs.12,800/-]

(38) The contention of learned senior counsel for the appellants to the effect that no source of income for payment of such money was proved, again in the opinion of this court, would not hold, with the recipient of the money never having raised any noise about non-payment thereof, at any time before his death, after he executed the sale deed, Ex. P-1.

This is again to be seen with the fact that the appellants could not absolutely deny the factum of a rift between them and their father, with even the marked document qua the suit filed by him against them, not having been specifically refuted.

Therefore, even the other judgments cited by learned senior counsel, in *Smt. Ind Kaur, S. Parameswar* and *Bhartus’ cases* (*all supra*), would not come to the rescue of the appellants.

(39) For all the reasons discussed hereinabove, I would find no ground to allow this appeal or to set aside the judgments and decrees issued by both the learned courts below, despite the strenuous and sincere effort made by Mr. Saggar.

Consequently, this appeal is dismissed.