

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****FA No. 436 of 2019****(Judgment reserved on 23.02.2022)****(Judgment delivered on 22.03.2022)**

Dr. (Smt.) Surjit Behl W/o Gurdeep Singh Behl, Aged About 75 Years Presently Residing At107 Victoria Urbane, 12 Park Road, Indore, Madhya Pradesh (Through In The Impugned Order Old Residential Address R/o 66, Silver S.T.U.D.-07, Race-course Road, PS Civil Line, Indore (M.P.) Is Mentioned)..... **--- Petitioner**

Versus

1. Smt. Jaspal Kaur Bhatia (Through Legal Heir)

1 (A) Shri Sardar Gulbir Singh Bhatiya S/o Late Shri Sardar Gulab Singh Bhatiya Aged About 70 Years R/o Infront Of Rajbhav, Civil Lines, Raipur District Raipur Chhattisgarh..... **Defendant.**

1(B) Smt. Arvinder Kaur W/o Shri Mahendra Pal Singh Bhatiya Aged About 47 Years R/o Near Shyam Plaza, Pandari, Raipur Chhattisgarh..... **Defendant**

1(C) Smt. Arjinder Kaur W/o Shri Avnit Singh Oberoy Aged About 48 Years R/o Near Batal House, Shankar Nagar, Raipur, District Raipur, Chhattisgarh..... **Defendant.**

1 (D) Smt. Sarbjit Kaur W/o Shri Ravi Singh Bhatiya Aged About 45 Years R/o Beguniya Tower, Bistapur, Jamshedpur District : Jamshedpur (Jharkhand)..... **Defendant.**

1(E) Smt. Harprit Kaur W/o Shri Gurubakshish Singh Bhatiya Aged About 43 Years R/o 6a, Sandesh Apartment, Union Park, Khar West Mumbai Distt. Mumbai (Maharashtra)..... **Defendant.**

2. Shri Satpal Singh Bhatiya S/o Shri Gulbir Singh Bhatiya Aged About 44 Years R/o In front of Raj Bhavan, Civil Lines, Raipur Distt. Raipur (Chhattisgarh)..... **Defendant.**

3. State of Chhattisgarh through the Collector, Raipur District Raipur, Chhattisgarh..... **Defendant**

--- Respondents

For the Appellant : Mr. Ashish Surana, Advocate

For Respondent No.1 : Mr. H. B. Agrawal, Senior Advocate with Ms. Swati Agrawal & Ms. Richa Dwivedi, Advocates



For Respondent No.2 : Mr. Manoj Paranjpe, Advocate

For Respondent No.3 : Ms. M. Asha Panel Lawyer

**DB : Hon'ble Shri Justice Goutam Bhaduri, Judge &
Hon'ble Shri Justice Sanjay S. Agrawal, Judge**

C.A.V. JUDGMENT

Per Goutam Bhaduri, J

1. This appeal is directed against the judgment and decree dated 25.07.2019 passed by the learned II Additional Judge to the Court of 1st Additional District Judge, Raipur in Civil Suit No.91-A/2014 whereby the suit was partly allowed.
2. The facts of the case are that the appellant plaintiff filed a suit for cancellation of sale deed and declaration of title along with injunction against the respondents. As per the plaintiff, the land of 0.094 hectares bearing Kh.No.20/34 equivalent to 10115 sqft which was earlier numbered as 20/31 20/18 in revenue records was purchased by the appellant by sale deed dated 25.04.1982 and since then the plaintiff claimed that he is in possession and ownership of the said land. It was pleaded that in the year 2003 two persons tried to disturb the possession for which a Civil Suit No.2-A/2009 was filed against Ravindra Kaur and others, which is pending. The plaintiff contended that she is an old lady residing at Indore and since she was tired of litigation as such in respect of sale of remaining of land of Kh.No. 20/34 admeasuring 7800 sqft, she gave a power of attorney to defendant No.2 Satpal Singh Bhatia by registered general power of attorney dated 06.09.2008. During the course of





litigation of Civil Suit No.2-A/2009 (*Surjeet Kaur Versus Ravinder Kaur & others*) a direction was issued for demarcation in respect of part of other land and accordingly when the commissioner's report was filed along-with the copy of sale deed 31.03.2010, for the first time she came to know that defendant/respondent no.2 herein Satpal Singh Bhatia has sold the entire land of 10115 sqft to his mother Smt. Jaspal Kaur Bhatia (since deceased). Thereafter certain police reports were made and cancellation of sale deed was agreed to be done but eventually it was not done. Eventually on 29.05.2014 a notice was served for cancellation of the sale deed. It was further contended that the sale consideration was not paid to the plaintiff /appellant and by the Power of Attorney dated 6.09.2008 only 7800 sqft of land was entitled to be sold whereas the defendant has sold the entire land of 10115 sqft by sale deed dated 31.03.2010, which is void. It was further contended that the Power of Attorney was confined only to sell 7800 sqft whereas the remaining 2315 sqft of land was not authorised to be sold or partitioned. Therefore, the entire sale of land of 10115 sqft is a nullity. Consequently the suit was filed for cancellation of the sale deed dated 31.3.2010 and for declaration that the plaintiff is in possession and ownership of land bearing Kh. No.20/34 admeasuring 10115 sqft of land. Further permanent injunction was also sought for.

3. The respondents filed the written statement wherein it was stated that the land bearing Kh.No.20/34 was sold in its entirety on 31.03.2010 and the demarcation was carried out by the plaintiffs itself in 2003, 2008 & 2012 which shows that





0.073 hectares equivalent to 7800 sqft exists at the spot and on rest of land, litigation was pending. It is further stated that the plaintiff had knowledge that no land is available to the extent of 10115 sqft., as described in the map and part of it is under litigation, as such, under the circumstances, the registered power of attorney was executed. Further it was stated that after executing the sale deed dt. 31.03.2010, the defendant was put into possession and she is holding the possession of the land. It was contended that by misrepresentation and suppression of such fact, the suit was filed. It was further pleaded that at the request of the plaintiff itself, the actual available land on the spot i.e., 7800 sqft was agreed to be sold and it was agreed that at the time of registry, the sale deed of the entire land of 10115 sqft would be executed. It was stated that the entire sale consideration was paid to the plaintiff. It is further pleaded that when the power of attorney was executed in 2008, the entire right to manage the sale transaction was conferred to the defendant and the plaintiff had received sale consideration in its entirety. It was further pleaded that the power of attorney was never cancelled at any point of time, which still exists. It was pleaded that the sale consideration of Rs.18,80,000/- was paid to the plaintiff by way of Cheque which was received by the plaintiff/appellant in her Bank Account. Therefore, the plaintiff was in know of the fact that the sale-deed was executed on 31.03.2010. It was further pleaded that another case was pending in between Appellant Surjit Kaur and Ravindra Kaur wherein an application was also filed by the





defendant to make him a party. Therefore, the plaintiff has knowledge about the sale. With respect to the Cheque, it was further pleaded that the cheque was received without any objection on 30.03.2010. Since the Cheque was not en-cashed in time as such the date was changed by making initials and on 21.10.2010 Cheque bearing no. 385321 was given to the plaintiff. The defendants further pleaded that the plaintiff has knowledge about the sale deed dated 31.03.2010 and the pleading to the effect that she came to know of the sale deed on 24.09.2012 is wrong. In respect of the power of attorney to sell the land to the extent of 7800 sqft, it was pleaded that only that much of land was available, therefore, the power of attorney was given to that extent and as per the request of the plaintiff, the defendant agreed to take-over the litigation which was pending and consequently the power of attorney was given to defendant no.2 Satpal Singh. It was stated that the husband of the plaintiff namely Gurudeep Singh who is power of attorney holder of the plaintiff being husband requested for purchase of land of 10155 sqft, therefore, at his request instead of 7800 sqft sale deed was executed for 10115 sqft of land. It was further pleaded that the suit was beyond period of limitation and it is not tenable.

4. On the basis of the facts and pleadings of parties, the learned trial Court framed 5 issues and passed a decree and instead of cancelling the entire sale deed of 10115 sqft, the sale deed to the extent of land admeasuring 2315 sqft of Kh.No.21/30 was cancelled which was beyond the power conferred by power of attorney and the defendant was





restrained permanently from transferring the property more than their part of purchase of 7800 sqft of land. Hence the appeal by the plaintiff appellant.

5. (i) Learned counsel for the appellant would submit that defendant No.2 Satpal Singh Bhatia was the Power of Attorney Holder of the plaintiff Smt. Surjit Behl and he executed the sale in favour of defendant no.1 on 03.10.2010 and despite he was given power to manage the sale transaction only to the extent of 7800 sqft of land, he sold the entire land of 10115 sqft in favour of his mother. He would further submit that the sale consideration was not paid. Referring to the contents of the sale deed he would submit that by the sale deed that by Cheque dated 30.03.2010 the amount of Rs.18,80,000 was alleged to be paid but the sale deed also contained the amount paid in cash. Therefore, a contradiction exists about the proper payment of sale consideration.

5(ii). He would submit that in written statement, the amount is said to have been paid on 20.10.2010. He would submit that the bank account Ex.D-4 shows that the amount so paid was reverted back to the seller. Referring to bank account of defendant no.1 Smt. Jaspal Kaur Bhatia (since deceased) he would submit that bank statement of Jaspal Kaur Bhatia also do not reflect the payment of sale consideration. He further submits that admittedly for a part of 2585 sqft, a different civil suit is pending with Ravinder Kaur for which a separate sale deed has been filed, therefore, the power of attorney was given only to manage the sale transaction of 7800 sqft whereas exceeding his right, 10115 sqft of land was sold. He





would submit that the Pass Book (Ex.D-1) of plaintiff Surjit Behl does not reflect the receipt of sale consideration. He further submits that this contradicts the account-statement of Jashpa Kaur Bhatia which is filed as Ex.D-2 which would show that no consideration was paid. Referring to the statement of D.W.1, he would submit that the admission was made that the amount of sale consideration of Rs.18,80,000/- was returned by the plaintiff.

5(iii). He would further submit that the learned trial Court failed to take note of this fact and passed the decree of cancellation of the sale deed in part only to the extent of sale of 2315 sqft., which otherwise ought not to have been done.

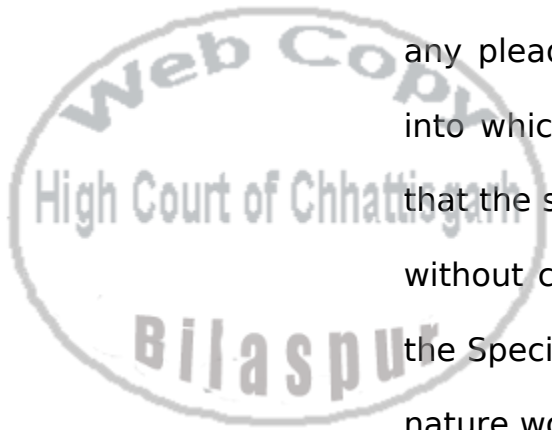
He would submit that the identity of property itself is also in dispute and only part of 2315 sqft of land which is made in excess of 7800 sqft has wrongly been annulled. Referring to the terms of power of attorney, he placed reliance in *Church of Christ Charitable Trust & Educational Charitable Society Vs. Ponniamman Educational Trust (2012) 8 SCC 706 (Paras 19, 20) and Anantha Pillai Versus Rathnasabapathy Mudaliar 1968 (2) MLJ 574 Para 10* and would submit that the intention of power of attorney is required to be strictly construed and if excess sale has been made beyond the power given, the entire sale would be cancelled. He further referred to *2021 SCC OnLine 1097, (2011) 6 SCC 555 & (2009) 4 SCC 193* and would submit that the intention of the parties in sale consideration is required to be adjudged and in the instant case, the intention of the plaintiff was that the sale-consideration was material and therefore for want of the payment of





consideration, the entire sale would be void. He further submits that there cannot be partial cancellation of instrument according to section 31 of the Specific Relief Act and consequently the part cancellation of the sale deed cannot be ordered for.

6. (i) Per contra, Mr. H.B. Agrawal, learned Senior Advocate assisted by Ms. Swati Agrawal and Ms. Richa Dwivedi appearing on behalf of legal heirs from respondents 1(A) to 1(E) and Mr. Manoj Paranjpe, appearing on behalf of respondent no.2 would submit that the pleading in the written statement about the return of sale consideration is completely missing. They would submit that in absence of any pleading of like nature, the evidence cannot be looked into which is placed by the plaintiff. It is further contended that the suit was filed simplicitor for cancellation of sale deed without claiming any possession. Referring to section 34 of the Specific Relief Act, they would submit that the suit of like nature would not be maintainable. They would further submit that it is a fit case where the Court may invoke the power under Order 41 Rule 33 of the Civil Procedure Code and the correctness of the decree can be seen by the appellate Court. They would submit that the admission on the part of the plaintiff exists that she is not in possession. Referring to the case laws relied on by the learned counsel for the appellant, they would submit that in respect of the sale consideration, it is not clear in whose account the amount paid and the transaction took place. They would submit that only the plaintiff examined herself and no personnel from the Bank were examined. Therefore, the authenticity of





Bank Account on which the reliance has been place is also not proved.

6(ii). They would further submit that even if it is held that the consideration has not been paid then in such a case merely non-payment of consideration would not render the sale deed invalid. Relying on decision in *Dahiben Vs. Arvindbhai Kalyanji Bhansushali (Gajra) through L.Rs. (2020) 7 SCC 366* it is contended that even if the averments of the plaintiff are taken to be true that the entire sale consideration is not paid, it could not be a ground for cancellation of the sale deed. Referring to the decision of the M.P. High Court in *Jabalpur Bus Operators Association 2003 (1) MPLJ 513* it is further contended that in case of conflict between two decisions of the Apex Court, Benches comprising of equal number of Judges, the decision of earlier Bench prevails.

6(iii) He would further submit that section 32 of the Specific Relief Act in the likewise cases would come into play and the identity of property when is admitted with the fact that part of it is under litigation and separate suit is filed in respect of remaining part of the land, the same can be cancelled to give effect to the sale. It is further submitted that the power of attorney having not been cancelled, the principle i.e., the plaintiff Smt. Surjit Behl would be bound by the act of the power of attorney holder especially when the instrument was executed in presence of her husband Gurudeep Singh Behl being a witness and in absence of any evidence by Surjeet Behl herself, the hearsay evidence cannot be accepted. It is contended that the foundation of





cancellation of sale deed is pleaded predominantly on the ground that sale deed dated 31.03.2010 (Ex.P-3) was executed for sale of land bearing Kh.20/34 ad-measuring 10115 sqft, which had exceeded the limit of Power of Attorney General wherein the power was given to manage the sale transaction of 7800 sqft., therefore, in absence of other pleading about return of sale consideration, the evidence could not be looked into. Therefore, the judgment and decree of the court below is well merited, which do not call for any interference.

7. We have heard learned counsel for the parties at length and have also perused the documents. Reading of the plaint shows that the suit was filed for cancellation of sale deed valued @ Rs.18,80,000/-, as also declaration of title and permanent injunction. A perusal of record shows that initially the land was bearing Khasra 20/18, then it was renumbered as 20/21 and lastly it was 20/34. The said purchase was made on 25.03.1982 (Ex. P-1). The sale deed was in the name of Surjit Behl, wife of Gurudeep Singh Behl, the plaintiff (appellant herein).

8. The Power of Attorney is proved and marked as Ex.P-2. A perusal of Ex.P-2 would show that the plaintiff/appellant gave power to Satpal Singh Bhatia, defendant/respondent no.2 herein, to manage the entire transaction of land bearing Kh.No.20/34 in respect of 7800 sqft and also the power was given to sell and to effect the registration. It is a registered power of Attorney dated 06.09.2008. It appears that the husband of the plaintiff itself namely Gurudeep Singh Bhell is one of the witness to the instrument.





9. Ex.P.3 is the sale deed whereby the sale was made by Surjeet Behl through Power of Attorney Satpal Bhatia, defendant no.2 in favour of Jaspal Kaur Bhatia (since deceased). The sale deed is in respect of land bearing Khasra No.20/34 for which the power was given and the boundaries of the land are shown as follows :

In the north – others land;
In the south – land of purchaser;
In the east - others land and
In the west – surrounded by road.

10. Reading of the averments of the plaint shows that in respect of the land, it was alleged that one Smt. Ravinder Kaur had tried to take over the possession over the part of land for which a civil suit was filed in the year 2003 which is pending bearing Civil Suit No.2-A/2009 against Ravinder Kaur. It is further pleaded that Ravinder Kaur gave an undertaking in the appellate court that she would remove the construction so raised, if the plaintiff succeeds. Therefore, it appears that the power of attorney was given to Satpal Singh Bhatia to manage the remaining part of land i.e.,7800 sqft out of 10115 sqft of total land comprising in Kh. No.20/34. With respect to the sale, it is alleged that initially the police report was made when she came to know that the sale deed dated 31.03.2010 has been executed in respect of the entire land of 10115 sqft. The pleading is made that the sale consideration was not paid to the plaintiff and the sale exceeds the power conferred to sell the area of 7800 sqft, therefore, the sale deed is void for non-consideration. The plaintiff herself examined alone in the case.





11. Reading of the statement under Order 18 Rule 4 from paras 1 to Para 10 would show the same averments are made as have been made in the plaint. There is no averment in the plaint and evidence that the amount of sale consideration was paid and thereafter was returned though it was sought to be proved by details of entry dt. 20.10.2010 sent by SBI, Indore (Ex.P-4). Reading of Ex.P-4 would show that it is a reply by the SBI, Indore which was supplied under Right to Information Act on reference of Plaintiff's query dated 9.06.2014. The letter purports that Rs.18,80,000/- was received from Axis Bank by RTGS for credit into account No.53013561719 on 20.10.2010 and the statement of account for the month of October was enclosed. The plaintiff appelland heavily relied on such statement of account. The attached page is the statement of account. Though it shows the amount of Rs.18,80,000 was deposited but according to the plaintiff, it was reversed on 25.10.2010. This statement is not proved by any Bank Officers as to which bank the account belongs or whether the entry contained in the account was maintained in usual course of banking business or not. It is also not certified under the Bankers Books of Evidence Act. Therefore when a correspondence which has been made by the Plaintiff with the State Bank, the author of such letter was required to be examined before the trial Court on which the plaintiff has placed heavy reliance.
12. On the contrary, the defendant has raised serious objection about such account in their submission. Simply by placing a document and marking it as Exhibit, which is otherwise required to be proved as per the Evidence Act by comparing





it with the original copy of Account and its author, the burden has not been discharged by plaintiff to prove such account. The document Ex.D-1, the copy of Pass Book of plaintiff has also not been proved by calling the original Ledger from the Bank. As such the copy of Pass Book having not been proved by comparing it with original ledger of Bank, the entry made thereunder in Pass Book cannot be said to be legally proved.

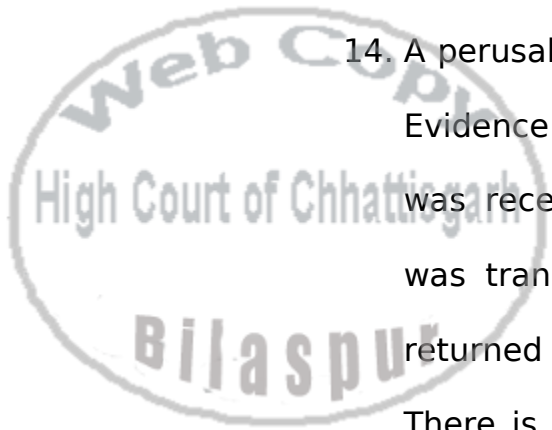
13. Apart from the aforesaid fact, the factum of receipt of sale consideration and thereafter its reversal with a particular date has not been pleaded. It is only general omnibus submissions were made in the plaint that the sale consideration has not been paid. The plaintiff in her evidence and submission before this court tried to develop that there is a discrepancy about the date of sale consideration inasmuch as in the sale deed Ex.P-3, the sale consideration is shown to be paid by a Cheque No.385321 of Axis Bank and in the description of sale consideration, it is stated that the plaintiff has received the amount in cash for which the acknowledgement is made and particulars of payment of the cheque has been shown. Therefore, when there is a statement in sale deed that the amount is paid by cash, whether any oral evidence to contradict the same against section 92 of the Indian Evidence Act to what extent admissible would be a query, which was required to be established by the plaintiff. The plaintiff has filed copy of Bank Pass-Book (Ex.D-1) entry of which shows that Rs.18,80,000/- was deposited on 20.10.2010 and further tried to prove that the amount was reversed on 25.10.2010. The copy of pass book, though not proved by comparing it





with original, shows that on 25.10.2010 by a Cheque No. 725095 the RTGS was made to account number of SBI NHI029834726. Nothing is placed on record to establish as to whom the said SBI Account belongs whether to the defendant alone or someone-else. When the plaintiff claims that amount of sale consideration paid to her by Axis Bank from the defendant was returned, then it should have been specifically pleaded and proved. On the contrary, Ex.D-2 which is proved by D.W.1 i.e., account of defendant, which too is not verified with original Ledger, shows that on 21.01.2010 an amount of Rs.18,80,000/- was withdrawn but depositing it back is not proved.

14. A perusal of the Bank Account, though not proved as per the Evidence Act, shows that the amount of sale consideration was received in the account of plaintiff, but subsequently was transferred by her. To whose account the same was returned or to whom the same was transferred is not proved. There is no pleading to this effect that the amount of sale consideration though was initially paid was asked to return at the instance of purchaser defendant. The defendant in his cross-examination has denied about any knowledge of particulars of that S.B.I. Account, which is shown in Ex.D-1 from 'B' to 'B'. If the plaintiff was sanguine of the fact that a particular account wherein the amount was transferred as shown in B to B belongs to the defendant, it could have been proved by calling the Bank Official with documents. A mere ambiguous statement of defendant without much clarity of fact cannot be solely acted upon. A reading of the plaint does not disclose the pleading to explain such discrepancies





of the transaction. When the issue pertains to non-payment of consideration and/or consideration received and returned, is projected which smacks of allegation of fraud or undue influence, such allegations were required to be proved and pleaded particularly in the plaint. The court will be reluctant to go into the fact finding on general and omnibus allegation that the sale consideration was not paid in absence of the pleading of like nature. The tenor of the evidence led would show that the parties are inter-se related with each other and the nature of transaction as per deposition speaks about undue-influence and fraud. When the allegations of undue influence and fraud are projected then this requires specific pleading in plaint.

15. The Supreme Court way back in *Ladli Prashad Jaiswal v. Karnal Distillery Co. Ltd.* AIR 1963 SC 1279, held that when a pleading of undue influence is being set up, the burden lies on the party raising it. Those averments requires a special pleading and proof. Paras 19 & 25 of the Judgment are relevant and quoted below :

(19). Whether a particular transaction was vitiated on the ground of undue influence is primarily a decision on a question of fact. In *Satgur Prasad v. Har Narain Das*, 59 Ind App 147 : (AIR 1932 PC 89) the Privy Council held that in a suit to set aside a deed on the ground that it was procured by undue influence and fraud, the finding that it was so procured is a finding of fact and is not liable to be reopened if fairly tried. Under the Civil Procedure Code, a second appeal does not lie to the High Court, except on the grounds specified in the relevant provisions of the Code, prescribing the right to prefer a second appeal, and the High Court



has not jurisdiction to entertain a second appeal “on the ground of an erroneous finding of fact however gross or inexcusable the error may seem to be” (Mt. Durga Choudharian v. Jawahir Singh Choudhari, 17 Ind App 122 (PC). But the challenge before Bishan Narain J., to the decision of the District Judge was founded not on the plea that appreciation of evidence was erroneous, but that there were no adequate particulars of the plea of undue influence, that the particulars of facts on which undue influence was held established by the District Judge were never set up, that there was no evidence in support of the finding of the District Judge and that burden of proof on a misconception of the real nature of the dispute was wrongly placed on the plaintiff. A decision of the first appellate Court reached after after placing the onus wrongfully or based on no evidence, or where there has been substantial error or defect in the procedure, producing error or defect in the decision of the case on the merits, is not conclusive and a second appeal lies to the High Court against that decision.”



(25). The doctrine of undue influence under the common law was evolved by the Courts in England for granting protection against transactions procured by the exercise of insidious forms of influence spiritual and temporal. The doctrine applies to acts of bounty as well as to other transactions in which one party by exercising his position of dominance obtains an unfair advantage over another. The Indian enactment is founded substantially on the rules of English common law. The first sub-section of S. 16 lays down the principle in general terms. By sub-section (2) a presumption arises that a person shall be deemed to be in a position to dominate the will of another if the conditions set out therein



are fulfilled. Sub-section (3) lays down the conditions for raising a rebuttable presumption that a transaction is procured by the exercise of undue influence. The reason for the rule in the third sub-section is that a person who has obtained an advantage over another by dominating his will, may also remain in a position to suppress the requisite evidence in support of the plea of undue influence.”

In the instant case, the plaintiff tried to project that unfair advantage was being taken by the defendant and since she was posted outside Raipur at a far off place in Indore, the defendant has used his position to obtain an unfair advantage and the sale transaction was effected, but particulars of such pleadings are absent, which points out a fraud.

16. When such factum of “fraud” is projected, the Supreme Court in *Ramesh B. Desai Vs. Bipin Vadilal Mehta (2006) 5 SCC 638* has held that specific pleadings are required. At paras 22 & 24 the Court held as under:

“22. Undoubtedly, Order 6 Rule 4 CPC requires that complete particulars of fraud shall be stated in the pleadings. The particulars of alleged fraud, which are required to be stated in the plaint, will depend upon the facts of each particular case and no abstract principle can be laid down in this regard. Where some transaction of money takes place to which 'A', 'B' and 'C' are parties and payment is made by cheques, in normal circumstances a third party 'X' may not get knowledge of the said transaction unless he is informed about it by someone who has knowledge of the transaction or he gets an opportunity to see the accounts of the parties concerned in the Bank. In such a case an assertion by 'X' that he got no





knowledge of the transaction when it took place and that he came to know about it subsequently through some proceedings in court cannot be said to be insufficient pleading for the purpose of Order 6 Rule 4 CPC. In such a case 'X' can only plead that he got no knowledge of the transaction and nothing more. Having regard to the circumstances of the case, we are of the opinion that the High Court was in error in holding that there was no proper pleading of fraud.

24. Mr. Iqbal Chagla, learned counsel for the respondents, has submitted that the full particulars of fraud had not been given in the company petition and as such there was no compliance with Order 6 Rule 4 CPC in the Company petition and the learned Company Judge has rightly dismissed the same. In support of this submission, he has placed reliance on *Bishnudeo Narain v. Seogeni Rai AIR 1951 SC 280 : 1951 SCR 548* wherein it was held that : (SCR p. 556)

“In cases of fraud, undue influence and coercion, the parties pleading it must set forth full particulars and the case can only be decided on the particulars as laid. There can be no departure from them in evidence. General allegations are insufficient even to amount to an averment of fraud of which any court ought to take notice however strong the language in which they are couched may be....”

Reliance has also been placed on *Bijendra Nath Srivastava v. Mayank Srivastava (1994) 6 SCC 117* and paras 208 and 228 of the report in *Sangramsinh P. Gaekwad v. Shantadevi P. Gaekwad (2005) 11 SCC 314* where the same principle has been reiterated. We have already considered this aspect of the matter and in our opinion in the facts and circumstances of the case the plea raised in the company petition cannot be





held to be wanting in compliance with Order 6 Rule 4 CPC.”

17. Therefore when the question of such undue influence and fraud was developed by the plaintiff, in absence of particulars of such pleading only by way of leading evidence, it will be unfair on the part of plaintiff to seek cancellation of a registered sale deed only to fall back and impress upon the statement of defendant.
18. Further, with respect to non-payment of sale consideration to the plaintiff, the argument is raised that for want of sale consideration, sale would be void. There is a finding of court below which records that for want of sale consideration, the sale deed cannot be annulled. Meaning thereby the sale consideration still remains to be paid. There is no cross-objection filed to such finding by the defendant. Though the finding has been recorded that the sale consideration has not been paid, this Court as a court of appeal in absence of any cross-objection leaves the question open for the plaintiff to further pursue any claim for the sale consideration. This observation is made pursuant to the finding of learned court below wherein it is held that the sale consideration has not been proved to be paid by the defendant. In absence of any cross-appeal, we are not inclined to deliberate on this issue.
19. For cancellation of sale-deed for non-payment of sale consideration, the appellant/plaintiff has relied on a decision in *Kewal Krishan Vs. Rajesh Kumar 2021 SCC OnLine SC 1097* and would submit that in absence of sale consideration, the sale would be void. At Paras 16 & 17 the Supreme Court held thus :

“16. Section 54 of the Transfer of Property Act, 1882





(for short “the TP Act”) reads thus :

“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 a 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 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.”

17. Hence, a sale of an immovable property has to be for a price. The price may be payable in future. It may be partly paid and the remaining part can be made payable in future. The payment of price is an essential part of a sale covered by section 54 of the TP Act. If a sale deed in respect of an immovable property is executed without payment of price and if it does not provide for the payment of price at a future date, it is not a sale at all in the eyes of law. It is of no legal effect. Therefore, such a sale will be void. It will not effect the transfer of the immovable property.”

20. The respondents have placed reliance on equal strength of





Supreme Court Judgment rendered in *Dahiben Versus Arvinbhai Kalyanji Bhanusali (Gajra) (2020) 7 SCC 366* wherein the Supreme Court at paras 29.7 held that if the sale consideration has not been paid, it could not be a ground for cancellation of sale deed. Paras 29.7 & 29.9 are relevant here and quoted below :

29.7. Section 54 of the Transfer of Property Act, 1882 provides as under:

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

The definition of “sale” indicates that there must be a transfer of ownership from one person to another i.e., transfer of all rights and interest in the property, which was possessed by the transferor to the transferee. The transferor cannot retain any part of the interest or right in the property, or else it would not be a sale. The definition further indicates that the transfer of ownership has to be made for a “price paid or promised or part-paid and part-promised”. Price thus constitutes an essential ingredient of the transaction of sale.

29.9 In view of the law laid down by this Court , even if the averments of the plaintiffs are taken to be true, that the entire sale consideration had not in fact been paid, it could not be a ground for cancellation of the sale deed. The plaintiffs may have other remedies in law for recovery of the balance consideration, but could not be granted the relief of cancellation of registered sale deed. We find that the suit filed by the plaintiffs is vexatious, merit-less, and does not disclose a right to sue. The plaint is liable to be rejected under Order 7 Rule 11(a).

21. A perusal of *Kewal Kishan Vs. Rajesh Kumar 2021 SCC*





OnLine SC 1097 would show that the earlier judgment of the equal strength of the Supreme Court Bench rendered in *Dahiben's case (2020) 7 SCC 366 (supra)* was not under consideration while the subsequent judgment of *Kewal Kishan's case (supra)* is passed. Under the circumstances we would follow the judgment of Madhya Pradesh High Court in *J.B.O. Association vs. State of M.P. in 2003 (1) MPLJ 513* wherein the High Court held that in case of conflict between two decisions of the Apex Court Benches comprising of equal number of judges, decision of earlier bench is binding unless explained by the latter bench of equal strength in which case the later decision is binding. Therefore, it was held that the decision of the earlier Division Bench unless distinguished by the decision of latter Division Bench, would be binding on the High Court and the subordinate courts. Paragraph 9 is relevant and quoted hereinbelow:

“9. Having considered the matter with broader dimensions, we find that various High Courts have given different opinion on the question involved. Some hold that in case of conflict between two judgments on a point of law, later decision should be followed; while others say that the Courts should follow the decision which is correct and accurate whether it is earlier or later. There are High Courts which hold that decision of earlier Bench is binding because of the theory of binding precedent and Article 141 of the Constitution of India. There are also decisions which hold that single Judge differing from another single Judge decision should refer the case to larger Bench, otherwise he is bound by it. Decisions which are rendered without considering the decisions expressing contrary view have no





value as a precedent. But in our considered opinion, the position may be stated thus –

With regard to the High Court, a single Bench is bound by the decision of another single Bench. In case, he does not agree with the view of the other single Bench, he should refer the matter to the larger Bench. Similarly, Division Bench is bound by the Judgment of earlier Division Bench. In case, it does not agree with the view of the earlier Division Bench, it should refer the matter to larger Bench. In case of conflict between judgments of two Division Benches of equal strength, the decision of earlier Division Bench shall be followed except when it is explained by the latter Division Bench in which case the decision of latter Division Bench shall be binding. The decision of larger Bench is binding on smaller Benches.

In case of conflict between two decisions of the Apex Court, Benches comprising of equal number of Judges, decision of earlier Bench is binding unless explained by the latter Bench of equal strength, in which case the later decision is binding. Decision of a larger Bench is binding on smaller Benches. Therefore, the decision of earlier Division Bench unless distinguished by latter Division Bench is binding on the High Courts and the Subordinate Courts. Similarly, in presence of Division Bench decisions and larger Bench decisions, the decisions of larger Bench are binding on the High Courts and subordinate Courts. No decision of Apex Court has been brought to our notice which holds that in case of conflict between the two decisions by equal number of Judges, the later decision is binding in all circumstances, or the High Courts and Subordinate Courts can follow any decision which is found correct and accurate to the case under consideration. High Courts and subordinate Courts should lack competence to interpret decisions of





Apex Court since that would not only defeat what is envisaged under Article 141 of the Constitution of India but also militate The common thread which runs through various decisions of apex Court seems to be that great value has to be attached to precedent which has taken the shape of rule being followed by it for the purpose of consistency and exactness in decisions of Court, unless the Court can clearly distinguish the decision put up as a precedent or is per incuriam, having been rendered without noticing some earlier precedents with which the Court agrees. Full Bench decision in *Balbir Singh's case* (supra) which holds that if there is conflict of views between the two co-equal Benches of the Apex Court, the High Court has to follow the Judgment which appears to it to state the law more elaborately and more accurately and in conformity with the scheme of the Act, in our considered opinion, for reasons recorded in preceding paragraphs of this judgment, does not lay down the correct law as to application of precedent and is, therefore, overruled on this point.”

(Emphasis supplied)

22. Though counsel for the appellant tried to develop an argument that the intention of the parties is to be seen, however, the same proposition can be interpreted in both ways on facts of particular case and the intention can be inferred. The evidence in the case would show that in part of land over 2315 sqft litigation is pending with Ravinder Kaur. So for the remaining land of 7800 sqft, power of attorney to manage the transaction including sale was given to defendant no.2. Consequent to such power of attorney, sale deed was executed in favour of Smt. Jaspal Kaur Bhatia. The

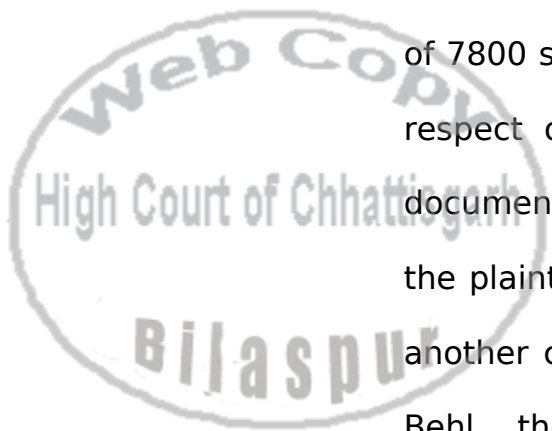




demarcation report Ex.P-6 shows that Jaspal Kaur Bhatia is in possession of subject land barring certain part. Therefore, the intention of seller can also be inferred especially when the power of attorney was not annulled at any point of time.

23. Therefore, in view of the principles laid down by Hon'ble the Supreme Court and the High Court in absence of any cross-objection filed by the respondent, keeping the issue open the finding of learned court below that for want of sale-consideration, the sale cannot be annulled is upheld in its entirety.

24. According to the power of attorney dated 06.09.2008, the intention of the seller was to sell the land only to the extent of 7800 sqft. The sale deed shows that the sale was done in respect of 10115 sqft of land bearing Kh.No. 20/34. The document Ex.P-6 which is a demarcation report proved by the plaintiff shows that order for demarcation was passed in another case bearing Civil Suit No.2-A/2009 filed by Surjeet Behl, the plaintiff, against Ravinder Kaur. When this document is minutely seen, it shows that demarcation of land bearing Kh.No.20/34 was measured in presence of Gurdeep Singh Behl, who is the husband of Surjit Behl, the plaintiff. The demarcation report along with map shows Khasra No.20/34 admeasuring 0.094 hectares is recorded in the name of Jaspal Kaur Bhatia (since deceased), the purchaser herein. The report further purports that on the spot possession of only 7500 sqft was found. It further shows that as per map, 1000 sqft of land is shown to be part of Kh.No.20/8-9-10 and is land of Revinder Kaur, which was marked in red. On the spot of demarcation i.e., Kh.No.20/34,





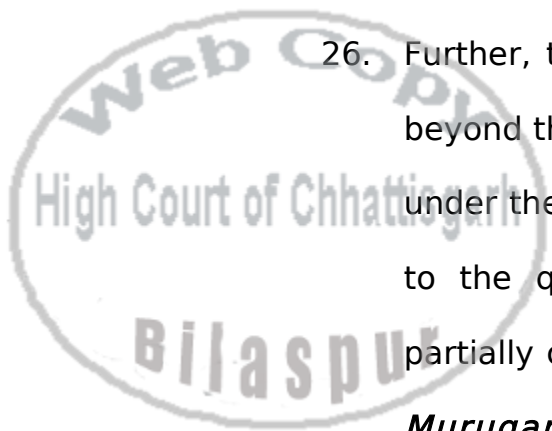
2583 sqft of land was found in possession of G.T.Homes (Ravindra Kaur), which forms part of Kh.No.20/34 & 20/18. Rest of the land is recorded in the name of Jaspal Kaur. The map attached with demarcation report shows the land of Kh.No.20/34 is in possession of Jaspal Kaur and not in possession of the plaintiff.

25. In the statement of plaintiff at Para 29, the oral submission is made that upon land, the plaintiff is in possession. Since the learned trial Court has held that in part of land, the plaintiff is in possession and such finding has not been assailed by the defendants by cross objection, we are not inclined to further go into such issue.

26. Further, the learned trial Court has cancelled the sale deed beyond the extent of 7800 sqft of land which was authorized under the power of attorney. In order to find out the answer to the question whether the trial Court was justified in partially cancelling the deed, the principles law laid down in ***Murugan Vs. Kesava Gounder (dead) through legal representatives (2019) 20 SCC 633*** is followed wherein the Supreme Court has quoted excerpts of *Salmonds on Jurisprudence, 12th Edn.*, at Para 15 which reads thus:

15. *Salmonds on Jurisprudence, 12th Edn.*, has noticed the distinction between valid, void and voidable in the following passage :

“..... A valid agreement is one which is fully operative in accordance with the intent of parties. A void agreement is one which entirely fails to receive legal recognition or sanction, the declared will of the parties being wholly destitute of legal efficacy. A voidable agreement stands midway between these two cases. It is not a nullity, but its operation is

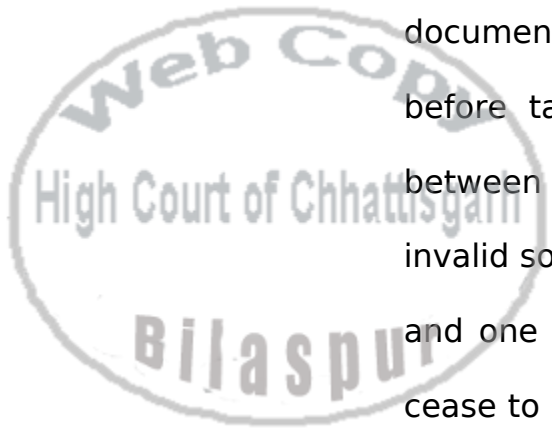




conditional and not absolute.”

27. As has been held in preceding paras that the sale deed is not void to say that it is out come of fraud, what would be validity of sale-deed when it exceeded the area given under power of attorney. The principle would be governed like that of sale of property of minor. The disposal of immovable property of minor made by the natural guardian is voidable, it is valid till it is avoided in accordance with law. The rights conferred by a registered sale deed are good enough against the whole world and the sale can be avoided in case the property sold is of a minor by a natural guardian at the instance of minor or any person claiming under him. A document which is voidable has to be actually set aside before taking its legal effect. A distinction can be made between cases where a document is wholly or partially invalid so that it can be disregarded by any court or authority and one where it has to be actually set aside before it can cease to have legal effect. Therefore, the alienation made in excess of power to transfer would be, to the extent of the excess of power, invalid. Para 24 is relevant here and quoted below :

24. We have noticed above that sub-section (3) of Section 8 refers to a disposal of immovable property by a natural guardian in contravention of sub-section (1) or sub-section (2) as voidable. When a registered sale deed is voidable, it is valid till it is avoided in accordance with law. The rights conferred by a registered sale deed are good enough against the whole world and the sale can be avoided in case the property sold is of a minor by a natural guardian at the instance of the minor or any person claiming under him. A document which is





voidable has to be actually set aside before taking its legal effect. This Court in *Gorakh Nath Dube v. Hari Narain Singh 1973 2 SCC 535* while making distinction between void and voidable document held : (SCCp.538, Para 5) -

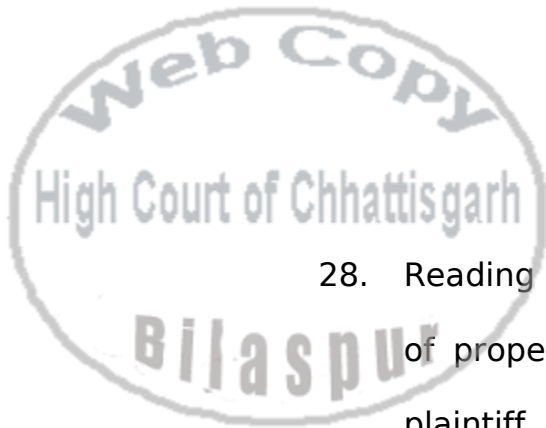
“5. ... We think that a distinction can be made between cases where a document is wholly or partially invalid so that it can be disregarded by any court or authority and one where it has to be actually set aside before it can cease to have legal effect. An alienation made in excess of power to transfer would be, to the extent of the excess of power, invalid. An adjudication on the effect of such a purported alienation would be necessarily implied in the decision of a dispute involving conflicting claims to rights or interests in land which are the subject-matter of consolidation proceedings. ...”

(Emphasis supplied)

28. Reading of the facts and evidence would show the identity of property was certain as per map Ex.P-6 proved by the plaintiff. After the part of the land was encroached by a third party Ravinder Kaur, for which, a civil suit was pending the subject sale was made wherein 4 boundaries are shown. Under section 32 of the Specific Relief Act, the Court is empowered to cancel the sale in part or allow it where an instrument is evidence of different rights or different obligations. Section 32 of the Act reads as under :

“32. *What instruments may be partially cancelled.* - Where an instrument is evidence of different rights or different obligations, the court may, in a proper case, cancel it in part and allow it to stand for the residue.”

29. The intention of the seller to sell the land of 7800 sqft by





power of attorney is undisputed. It appears that because of the part of property was in possession of the Ravinder Kaur, the power to sell the remaining part was given to the present respondent no.2. Consequently the cancellation of part of sale deed in excess of 7800 sqft by the trial Court also appears to be justified in the given facts of this case. Therefore, after careful examination of the facts and evidence, we are not inclined to interfere with the finding of the trial Court. Accordingly, the appeal is dismissed. No order as to costs.

**Sd/-
GOUTAM BHADURI
JUDGE**

**Sd/-
SANJAY S. AGRAWAL
JUDGE**





HEAD-NOTES

(1) The alienation of property made in excess of power to transfer would be, to the extent of the excess of power, invalid.

(2) In case of conflict between two decisions of Apex Court, Benches comprising of equal number of judges, decision of earlier bench prevails unless explained by the later bench.

1. यदि संपत्ति का अंतरण अधिकार क्षेत्र से बाहर जाकर किया गया हो तो ऐसा अंतरण उस सीमा तक अवैध होगा जो अधिकार क्षेत्र से बाहर जाकर किया गया हो।

2. उच्चतम न्यायालय के दो ऐसे पीठ जिनमें न्यायाधीशगणों की संख्या समान हो द्वारा पारित निर्णयों में मतभेद की स्थिति में जब तक पश्चात्वर्ती पीठ उन बिंदुओं को जिससे निर्णयों में मध्य मतभेद की स्थिति निर्मित हुई थी स्पष्ट न कर दे, पूर्ववर्ती पीठ द्वारा पारित निर्णय ही प्रभावी होगा।

