

**HIGH COURT OF CHHATTISGARH, BILASPUR****First Appeal No. 48 of 1999****Judgment Reserved on 02/02/2022****Judgment Delivered on 23/03/2022**

Abbas Bhai (Dead Through LRs Mufaddal Azad, S/o Burhanuddin, R/o Ahmedji Colony, Nulghar, Raipur Town, Police Station Civil Lines, Raipur, District Raipur Chhattisgarh

**---- Appellant/ Plaintiff**

**Versus**

Smt. Pushpa Kumari, D/o Rajmata Hitendra Kumari Devi, W/o Rajendra Singh Deo, Resident of Talcher, Orissa.

- 1.1(A) Vijayendra Chandra Deo (Deleted) Aged About 8 Years, As per the Hon'ble Court Order Dated 08-12-2020
- 1.1 (B) Swadeshja Kumari Devi, D/o Rajendra Singh Deo, Aged About 6 Years Minors, Through Court Reader, Resident of Talcher, Orissa.
- 1.1(C) Shailendra Chandra Deo, S/o Rajendra Singh Deo, Aged About 3 Years, Minors, Through Court Reader, Resident of Talcher, Orissa.
2. Krishna Kumari Devi, Wd/o Bharatchandra Bhanjdeo, Aged About 37 Years,
  - 2.1 (A) Kamalchandra Bhanjdeo, S/o. Late Bharatchandra Bhanjdeo
  - 2.1 (B) Gayatri Devi, D/o Late Bharatchandra Bhanjdeo, Defendant No. 2 to 2(b) all residents of Sakin Rajmahal, Jagdalpur District Bastar (M.P.)
3. Hari Har Chandra Bhanjdeo, S/o Late Vidyachandra Bhanjdeo, Aged About 25 Years, Resident of Sakin Rajmahal, Jagdalpur, District Bastar (MP).
4. Smt. Jyoti Wd/o. Deweshchandra Bhanjdeo, Aged About 25 Years,
  - 4.1(A) Jubika Devi, D/o. Late Deweshchandra Bhanjdeo, Aged About 3 Years
  - 4.2(B) Mohitchandra Bhanjdeo, S/o Late Deweshchandra Bhanjdeo, Aged about 4 months, Defendant No. 4 (A) and 4(B) both minor through their mother Jyoti Devi, R/o. Rajmahal, Jagdalpur (MP)

**---- Respondents / Defendants**

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For the Appellant : Mr. Manoj Paranjpe, Advocate  
For the Respondents : Mr. Prafull N. Bharat, Sr. Advocate with  
2, 2(a) and 2(b) Mr. Keshav Dewangan, Advocate

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**Hon'ble Shri Justice Narendra Kumar Vyas**

**CAV Judgment**

1. The instant First Appeal has been filed by the appellant/ plaintiff under Section 96 of the Code of Civil Procedure, 1908 challenging the judgment and decree dated 06.11.1998 passed by 3<sup>rd</sup> Additional District Judge, Bastar at Jagdalpur in Civil Suit No. 8A/1993, whereby the suit preferred by the appellant/ plaintiff has been dismissed.
2. The necessary facts for disposal of the present appeal, in short are that the plaintiff had filed a civil suit for specific performance of contract on 03.02.1984 contending that defendants No. 1 to 4 are the owners of the property described in the plaint bearing sheet No. 60, plot No. 106, 86/2 situated in the city of Jagdalpur, Tahsil Jagdalpur, and defendant No. 5 was duly registered general power of attorney holder of respondents No. 1 to 4. By this power of attorney dated 17.08.1983, defendant No. 5 has been authorized to negotiate and enter into contract of sale of immovable properties, land, houses, vacant site, building site, as per details mentioned in the power of attorney itself. It has also been pleaded in the plaint that in exercise of power and authority vested in the defendant no. 5 had entered into an agreement for sale of property as mentioned in schedule of the property for a consideration of Rs. 1,00,000/- on 20.08.1983. As per the agreement, the plaintiff had paid Rs. 25,000/- in cash as earnest money for the suit land to the agent of the defendants No. 1,2,3 and 4 Vidyasagar Tiwari defendant no. 5 and for the balance amount of Rs. 75,000/- the plaintiff paid five postdated cheques dated 09.11.1983, 05.11.1983, 05.12.1983, 20.12.1983 and 05.01.1984 for Rs. 15,000/- each to defendant No.1. It has been contended that the plaintiff was in possession of the suit property and before Dussehra festival, in the year 1983, he went to the defendant No. 2 then he asked him to stop payment issued in favour of defendant No.1 as there was some family dispute arisen between defendants No.1 to 4. Since there was no communication with regard to performance of the contract by the defendant, plaintiff sent a legal notice on

15.10.1983 with regard to performance of contract by the parties.

3. It has been contended in the plaint that defendant No.2 has given the reply denying the execution of agreement and also with regard to execution of power of attorney in favour of defendant no. 5. He also denied the right and title of other defendants and claimed himself to be exclusive owner of the suit land. It has been further contended that on 27.08.1983 power of attorney purported to have been executed by defendant No.2 and was revoked by him by publication in Dandakaranya Samachar newspaper. It has been further pleaded that deed of revocation dated 27.08.1983 even if, it is valid, does not affect in any manner, the agreement dated 20.08.1983 as the agreement was executed when the power of attorney was in existence, therefore, they are bound to perform the said contract.
4. The plaintiff has amended the plaint and certain pleading were made which are mainly by;- enforcement of 26 amendment of the Constitution of India in 1971 introducing the Article 363(1) all rights, privileges and status granted under the Constitution of all the "Rulers" including the defendant No. 2 have been abolished and the Rulers are now at par with all other citizens of India without any additional privileges or status granted under the Constitution of India or any covenant or agreement entered into by them before the commencement of the Constitution of India. Thus the defendant No. 2 hold the suit property without any restriction and the property which is in his exclusive or joint with other defendants could be sold by him. On above factual matrix the plaintiff has prayed for directing the defendants to perform their part of contract as per agreement dated 20.08.1983 and also grant necessary full possession of the suit property.
5. Defendant No. 1,3 to 5 have filed their joint written statement. The defendant no. 1,3 to 5 have admitted the case of the plaintiff and submitted that postdated cheques of Rs. 15,000/- each issued by the plaintiff could not be encashed. The defendants No. 1,3 to 5 had put the plaintiff in possession of the suit property in good faith expecting that he will abide with terms of the contract and the post dated cheques will be honoured. The plaintiff was enjoying the suit properties being in possession of the same being tenant but he was not paying the rent as such, he was saving rent of Rs. 385/- per month, therefore, the plaintiff be directed to deposit Rs. 385/- per month till execution of the sale deed. It is admitted that after service of notice these defendants have sent their reply on 21.11.1983 through their counsel

contending that they are ready and willing to execute the sale deed as per agreement dated 20.08.1983 and asked the plaintiff to pay the balance amount to which the plaintiff did not comply. Since the plaintiff has not complied the terms of the contract, therefore, he is not entitled to get the sale deed to be executed in his favour and the suit is liable to be dismissed.

6. Defendant No. 2 has filed his separate written statement raising preliminary objection contending that Maharaja Praveerchandra Bhanjdeo the then Ruler of Bastar entered into an agreement with the Government of India on or about 15<sup>th</sup> December 1947 whereby he transferred the administration of Bastar State to the dominion of India, and from 01-01-1948 Bastar State merged into Government of India. That by Article III of the above agreement Late Praveerchandra Bhanjdeo was entitled to ownership of all the properties in capacity as a Ruler of Bastar. On 31<sup>st</sup> March 1948, an agreed inventory of properties was arrived at between Late Maharaja Praveerchandra Bhanjdeo and premier C.P. Berar acting on behalf of the Government of India. By properties vesting in the late Maharaja P.C. Bhanjdeo it was meant that he became owner in the sense that they were attached to his position as Maharaja and Ruler recognized as such by the Government of India and these properties would devolve on the next succeeding Maharaja and Ruler when Maharaja P.C. Bhanjdeo would die either physically or civilly, said properties for the purposes of inheritance and succession, are not governed by Hindu Law. These properties are in alienable. That the suit property is a part and parcel of Ruler's residence situated within palace premises and meant exclusively for Ruler's residence and is specifically declared by the Government to be in-alienable. It has been further contended that on 12.01.1961 late Maharaja P.C. Bhanjdeo expired and late Maharaja Vijay Chandra Bhanjdeo was recognized as Ruler and Maharaja of Bastar, with the privileges of ownership and enjoyment of Ruler's property. It has been further contended that after death of Maharaja Vijay Chandra Bhanjdeo, defendant No.2 was recognized as Ruler and Maharaja of Bastar w.e.f 12.04.1970 by the Government of India, Ministry of Home Affairs vide notification No. F 5/7/70 Poll-III dated 11.07.1970. The defendant No. 2 continued to be Ruler and Maharaja of Bastar, with exclusive ownership and enjoyment of Ruler's property. It is further contended that defendant No.2 Bharatchandra Bhanjdeo being the last Maharaja and Ruler of Bastar, all the properties owned and enjoyed by him as a Ruler, including the suit property vests in him exclusively

and question of succession and inheritance under the Hindu Law does not arise. Thus the defendant No.2 is the sole owner of the suit property, excluding defendant No.1,3 and 4. It has been further contended that the suit property, its ownership, enjoyment and question of its succession are matters within the ambit of said provisions and thus the suit is barred under Article 363(1) of the Constitution of India.

7. It has been further contended that the suit house and premises were rented to M/s. Ahmed Ji Bhai Jagdalpur by defendant No.2 on monthly rent and they continued to be in occupation of the same as tenant. It has been specifically denied that the possession of suit house and premises were ever given to the plaintiff. It has been further contended that the defendant no. 2 is the sole owner of the suit property as the last Ruler of Bastar and the suit premises was still recorded in the name of Maharaja. The entire property of Maharaja which vested in the defendant No.2 was under the control of Court of Wards of Jagdalpur for defendant No.2. It is denied that defendant No. 5 was duly constituted attorney of defendant No.2 alleged power of Attorney was got signed by defendant No.2 under undue influence, coercion, threat and fraud by defendant No. 1 and 5.
8. The defendant No. 1 and 5 were getting signature on blank stamp papers, some time on written stamp papers, or on ordinary papers under coercion undue influence and fraud, the contents of which were never disclosed to the defendant no.2 by them. The alleged Power of Attorney dated 17.08.1983 is a sham and bogus document. It is submitted that the defendant No.1 and 5 asserted that the properties at Culcutta and Baripada (Orissa) belonging to defendant No. 1 to 4 are mismanaged and beyond their control, therefore, they have decided to empower the defendant No. 5 for management purpose only. The defendant No. 2 was under complete dominance and threat of defendant No.1 and 5 and he signed the said Power of Attorney believing that the power of attorney is being signed for the above mentioned purposes as suggested by defendant no. 1 and 5. It is further denied that the defendant No. 5 was ever authorized by defendant No.2 to negotiate and enter into a contract of sale of any immovable properties, including the suit property. It is contended that the suit property is part and parcel of Ruler's residence and is in-alienable. It has been further contended that defendant No.1 and 5 have planned to sell off the palace properties, the defendant No.2 immediately complained the matter to the Collector Bastar, Superintendent of Police,

Jagdapur, and got revoked the alleged power of attorney by the Notary and subsequently by a registered revocation deed.

9. It is denied that defendant No. 2 had any contract with the plaintiff regarding sale of the property as alleged by the plaintiff. The alleged agreement of sale is a nullity, as the suit property is in-alienable as stated in foregoing paras. It is denied that any amount has been paid to the defendant No.2, as earnest money. It is denied that there was any agreement of sale of suit property for consideration of Rs. 1,00,000/-. The defendant No. 5 had been exploiting the defendant No.2 with the conspiracy of defendant No.1 who unfortunately happens to be the mother of defendant No.2. The defendant No. 5 had not paid any amount of alleged sale to the defendant No.2 nor he ever intimated the defendant No. 2 with regard to alleged agreement of sale. It is submitted that the defendant No.2 had been mentally deranged for the last 15 years and was undergoing treatment from mental hospital Ranchi, from time to time. It is further contended that title over properties cannot be disposed of on simple whims and agreements (unregistered) of the parties. It has also been denied that the defendant no.2 has disclosed the factual matrix of the case to the plaintiff in response to the notice and would pray for dismissal of the suit.
10. Learned trial Court after pleading of the parties has framed as many as 16 issues, out of which the issues which are relevant and necessary for deciding the present appeal are extracted below:-
  - (1). Was the plaintiff placed in possession of the suit property in pursuance of an agreement executed by defendant No. 5 on behalf of the co-defendants on 20.08.1983?
  - (2) Was the defendant No.5 validly constituted power of attorney by the defendant No.2 Bharatchandra also?.
  - (3) Was the power of attorney got signed by the defendant No.2 misrepresenting that the same was constituted for management of the properties at Calcutta and Baripada (Orissa)?.
  - (4) Was the suit agreement antedated and executed by the defendant No.5 after revocation of his power of attorney by the defendant No.2 ?
  - (5) (a) Did the suit property vest in the defendant

No. 2 as the ruler of the Bastar Estate duly recognized by the Govt. of India vide notification no. 5/7/70Poll-III dated 11.07.70 ?

(b) If so, is the suit property in alienable?

(6) Is the suit for specific performance of the contract of sale of the property barred under article 366 (1) of the Constitution of India?

(7) (a) Has the defendant No. 2 declared by agreement dated 30.07.81 the suit property to be owned jointly by the defendant No.1 to 4 ?

(b) If so, will the Rule of estoppel operate against the defendant No. 2 to dispute agreement of sale of this property executed on behalf of the defendants by defendant No.5 ?

(8) Was the power of attorney got executed by coercion and dominance exercised by the defendant no. 1 and 5 ?

(9) If so, is the agreement executed by the power of attorney not enforceable against the defendant No.2 ?

(10) (a) Was the plaintiff occupying the suit propert as a tenant?

(b) Was he called upon to vacate the tenant premises through a notice dated 09.06.73 ?

- 11.** Plaintiff examined himself as (PW-1), J.L. Wasnikar (PW-2), Pawan Dubey (PW-3), Mahendra Vishwakarma (PW-4) and exhibited general power of attorney dated 17.8.83 (Ex.P-1), sale agreement dated 20.08.1993 (Ex.P-2), Notice dated 15.10.1983 (Ex.P-3), receipt (Ex.P-4), acknowledgement (Ex.P-5), Notice dated 03.11.1983 (Ex.P-6), postal receipts (Ex.P-7 to Ex.P-11), Notice dated 15.06.1983 (Ex.P-12), acknowledgement (Ex.P-15 to Ex.P-18) receipt (Ex.P-18), paper publication (Ex.P-19), paper publication (Ex.P-20), notice revocation of power of attorney (Ex.P-21), notice published on 28.08.1983 (Ex.P-22), agreement dated 22.08.1983 (Ex.P-23), agreement (Ex.P-24), Letter written by Vidyasagar Tiwari (Ex.P-25). The defendant examined Harihar Chandra Bhanjdeo (DW-1), Sahdeo Dhruv (DW-2), and Ghanshyam Mishra (DW-3).

- 12.** Plaintiff (PW-1) has deposed in his examination-in-chief that the agreement was executed on 20.08.1983 through the power of attorney holder Vidyasagar Tiwari. He has also stated that after execution of agreement, he talked to defendant No. 2 Bharatchandra Bhanjdeo, who has told him to stop the payment as there is dispute. He has also stated that the suit land belongs to joint family property. He has also stated that he has been given possession of the suit property by defendants No. 1,3 and 5. He has also stated that after execution of agreement to sell, he is taking rent of Rs 700/- from M/s. Ahmad Ji Bhai. He has further stated that power of attorney holder has given this right to him after intimation to the Income Tax Officer. The defendant no. 1,(a) (b), (c), 3 and 4 have not cross examined the witness. Counsel for defendant No.2 has cross-examined the witness wherein he has denied that the tenancy was given by Court of Ward of Bharatchandra Bhanjdeo. He has also admitted that power of attorney has not been written before him. He has also stated that he was not aware whether any notice in the year 1982 for vacating the house, shop was ever given to him. He has also admitted that before execution of agreement, he has not met defendant no. 2. He has also stated that he is not aware rate of the suit property is Rs. 200 per squire feet. He has also stated that he is not aware that defendant no. 2 is suffering from mental disorder. He has admitted in the cross-examination that in the sale agreement though the property is joint family property, still in the agreement Late Hitendra Kumari Devi and Hariharchandra Bhanjdeo, have put their signatures as witness to the agreement. He has also stated that he is not aware that defendant no. 2 has no cordial relation with other family members and Vidyasagar Tiwari. He has stated that it is not in his knowledge that before execution of sale agreement of the suit property rent was paid to whom. He has admitted that suit property is 100 -150 meter away from palace. He has also admitted that suit property belongs to Maharaja then clarify that he is not aware that suit property is Ruler property.
- 13.** J.L. Wasnikar (PW-2) has admitted that he has not typed (Ex.P-1) but inadvertently it has been mentioned that Ex.P-1 has been typed by him. He has admitted that the suit property is Ruler property and the defendant No. 2 was the last Ruler. He has admitted that agreement dated 22.08.1983 (Ex.P-23) has not been written by him nor he has put his signature on it.
- 14.** Pawan Dubey (PW-3) has admitted that he published general information (Ex.P-20) in Deshbandhu newspaper on 03.09.1983. Mahendra Vishwakarma

(PW-4) he has also admitted that he published (Ex.P-19) information on 23.10.1983 in Dandakaranya newspaper.

- 15.** Hariharchandra Bhanjadeo (DW-1) has examined before the trial Court wherein he has stated that Vidyasagar Tiwari has taken his signature on various paper but he did not disclose the contents of the papers. He has stated that he has never asked him on which paper he had taken his signature because he was scolded by others. He has never made any complaint to anybody. Vidyasagar Tiwari had support of Rajmata. He has stated that they have not given any power of attorney to Vidyasagar Tiwari. He has stated that Abbas Bhai is the proprietor of M/s. A. Ahmad Ji Bhai firm and he was living there as tenant. He has stated that he has neither made any agreement to sell the property with Abbas Bhai nor signed any document of agreement. He admitted that in the year 1982-83 there was dispute between Vidyasagar Tiwari and Bharatchandra Bhanjdeo regarding sale of land, as a result of quarrel, Bharatchandra Bhanjdeo and his wife was thrown out from the palace. He has stated that after the death of Rajmata, the family members were living together in the meantime time Vidyasagar Tiwari had died. He stated that Bharatchandra Bhanjdeo was the last Ruler of Bastar District. He has also stated that Bharatchandra Bhanjdeo was not physically and mentally fit and he was treated by Dr. Shukla at Jagdalpur and Dr. Sahgal at Bhilai who was taking care of Bharatchandra Bhanjadeo and he was admitted for further treatment in Mental Hospital Ranchi. He has stated that health of Bharatchandra Bhanjdeo was not good for last two months and during the treatment he became violent.
- 16.** The witness was cross-examined wherein he has stated that Bharatchandra Bhanjdeo was the head of the family and being the head of the family he looked after all the property. He has stated that he had not sold any properties situated near Rajmahal.
- 17.** Rajmata Smt. Krishnakumari Devi Bhanjdeo was examined as (DW-2) wherein she has stated that the suit property belonged to Estate of Maharaja and Bharatchandra Bhanjdeo was the last ruler of the Bastar and he was recognized by the Central Government. He has stated that the suit land cannot be sold as the Government has already imposed ban. She has stated that Maharaja Bharatchandra Bhanjdeo has not given any authority to Vidyasagar Tiwari to sell the property. She admitted that Maharaja was suffering from mental disorder before her marriage therefore, Court of ward

was appointed by the Collector. This witness has further stated that she is not having information regarding any agreement entered between Maharaja Bharatchandra Bhanjdeo and Abbas Bhai. She has stated that when she had received information regarding agreement to sell with Abbas Bhai, she was informed by Secretary of Maharaja namely Ghanshyam Mishra on that issue then Maharaja quarreled with Rajmata. Maharaja went to Collector and asked him for cancellation of agreement and paper publication was also done for cancellation of agreement consequently he went to notary for cancellation of agreement. The suit property cannot be sold as government has already prohibited for sale of palace portion. She has stated that an order in the mutation proceedings is pending and till the proceeding is pending the Estate of places could not be sold, as stay is still in force. She has stated that Maharaja has not given any authority to Vidyasagar Tiwari to sell the property. If any right to agreement for sale of property is written, when Maharaja was not well. Vidyasagar Tiwari was the Secretary of Maharani. She has stated that Vidyasagar Tiwari has mutated some property in his family members. Vidyasagar Tiwari was threatening the children and Maharaja for putting their signatures in paper. He wanted to keep everybody in his domination. Vidyasagar Tiwari wants to get things as per his desire and if it has not been done then he used to keep them in locked room and stopped providing food also.

- 18.** This witness was cross-examined wherein she has stated that she made complaint against Vidyasagar Tiwari before Collector Jagdalpur and a report was also made against him and in view of complaint Vidyasagar Tiwari was not allowed to enter in the palace. She has stated that they have not sold any property. Vidyasagar Tiwari has got registered some property in the name of his relative but their names have not been mutated in the records. There was no cross-examination by the plaintiff with regard to plea of undue influence for execution of power of attorney raised by the defendants. In fact she has denied that her husband was physically fit and used to work with full mental ability. She has stated that her husband was ill at the time of marriage till his death.
- 19.** Shahdeo Dhruv (DW-3) he has stated that the rate of the property situated in various wards of the Jagdalpur District has been increased to demonstrate that the property is undervalued. Ghanshyam Mishra (DW-4) manager of the palace, has stated that in year 1982 Vidyasagar Tiwari has got signature of

Bharatchandra Bhanjadeo forcefully therefore, there was quarrel between them. The Collector has ordered for payment of rent to Bharatchandra Bhanjadeo for maintaining himself. The Collector had advised him for cancellation of power of attorney, for this he has taken steps for paper publication. There was dispute between Vidyasagar Tiwari and Bharatchandra Bhanjdeo with regard to power of attorney as the property was recorded in the name of Maharaja. He has also admitted that Bharatchandra Bhanjdeo was not physically and mentally fit and he was treated by Dr. Shukla at Jagdalpur, Dr. Sahgal at Bhilai who was taking care of Bharatchandra Bhanjadeo and thereafter he was admitted for further treatment in Mental Hospital Ranchi. It is stated the witness that Vidyasagar Tiwari had executed sale deed in the name of Rama Vashnikar and Rajesh Kumar Tiwari but the mutation proceedings has not been done because palace property cannot be sold out. It is Ruler's residential property and it is transferred to generation by generation and not alienation to anybody.

- 20.** Learned trial Court after appreciating the evidence, material on record dismissed the suit by recording the finding a power of attorney has been written with under undue influence, as such, it is not a valid power of attorney, therefore, any agreement executed by defendant No. 5 on the strength of illegal power of attorney will be remained as illegal. Learned trial Court has also recorded the finding that the suit land is a palace property, which cannot be transferred. Learned trial Court while raising doubt over execution of agreement has recorded a finding that persons whose property is to be sold have put their signature as witness. Learned trial Court has also recorded the finding that the person who has written the agreement has not been examined and no explanation has been given for non-production of that witness for evidence. Learned trial Court while dismissing the suit has also recorded a finding that the plaintiff has deposed that he has given Rs. 25,000/- to defendant no.2 but has not filed any document to substantiate the mode of transfer of such a big amount, therefore, issue no. 8 has also been answered in negative against the plaintiff. Learned trial Court after appreciating the evidence, material on record has decided issue nos. 1 to 13 and additional issues against the plaintiff. Learned trial Court has also recorded a finding that the plaintiff has stated before the trial Court that encashment of cheque amount has been withheld on account of dispute, therefore, it is quite clear that plaintiff has failed to perform his part of contract and finally the suit was

dismissed vide judgment and decree dated 06.11.1998. This judgment and decree is being assailed by the plaintiff before this Court by filing appeal under Section 96 CPC.

21. Learned counsel for appellant/plaintiff would submit that findings recorded by learned trial Court are perverse, contrary to the evidence and law also. He would submit that registered power of attorney cannot be revoked other than the registered revocation deed. In support of his submission he would rely upon the judgment of Madhya Pradesh High Court in case of **Kamla Bai vs. Rajesh 2008(3)MPJR 317** and would refer to para 11 which is as under:-

“The power of attorney is an instrument empowering a specified person to act for and in the name of the person executing it. It gives authority to the person in whose favour the power of attorney was executed to act in the name of executant. In this case, power of attorney was a registered power of attorney executed by plaintiff in favour of defendant Shyam Rao. It was a registered power of attorney under Section 32 (C) of the Registration Act. If the power of attorney executed by a registered document, naturally for cancellation, a registered document was required and the plaintiff ought to have cancelled it by a registered document. But in place of this, plaintiff opted to serve a notice intimating defendant No. 2 Shyam Rao for revocation of the attorney. Aforesaid procedure was not a proper one and the plaintiff only after cancellation of the power of attorney by registered document ought to have intimated to the defendants in respect of such cancellation. Apart from this, notice was refused by Shyam Rao on 30.04.1973 when he had already executed the sale deed on the basis of power of attorney in favour of defendant Rajesh. In these circumstances, the revocation of power of attorney was not of any consequences and the sale deed executed on the basis of the power

of attorney was a valid document. The plaintiff ought to have sought a specific relief of cancellation of the sale deed, executed on the strength of power of attorney and in absence of this, sale deed was a valid document”.

22. He would further submit that the learned trial Court should have seen that other vendee can execute the sale deed in favour of the vendor if other vendee has denied execution of sale deed. To substantiate his submission he would refer judgment of Hon'ble Supreme Court in the matter of **Kamma Sambamurthy v. Kalipatnapu Atchutamma (2011) 11 SCC 153**. He would further submit that since the power of attorney is a registered document and there would be presumption that registered document is validly executed document as such onus of proof would be on a person who leads evidence to rebut the presumption and in the present case, no such rebuttal of the presumption was made. He would refer judgment of Hon'ble Supreme Court in case of **Prem Singh vs. Birbal (2006) 5 SCC 353** where the Hon'ble Supreme Court has held as under;-

27. There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption”. In the instant case, Respondent No.1 has not been able to rebut the said presumption. Learned counsel for the appellant would submit that in absence of any cogent evidence, material on record to prove that power of attorney was given under undue influence or fraud, the registered document cannot be treated as a sham document.

23. In support of his submission he would reply upon the judgment of Madhya Pradesh High Court in the case of **Shamim Afroz vs. Mehfooz-Ul Hassan, (2007) 1 MPLJ 103**. He would further submit that registered document cannot be excluded by oral evidence in terms of section 92 of the Evidence Act and would refer the judgment in the matter of **V. Anantha Raju and Another vs. T.M. Narasimhan & others (2021) SCC online SC page No. 969**, he would refer paragraph 36 which extracted below:-

This Court has further held that Section 91 and 92 of the Evidence Act would apply only when the document on the face of it contains or appears to contain all the terms of the contract. It has been held that after the document has been produced to prove its terms under section 91, the provisions of section 92 come into operation for the purpose of excluding evidence of any oral agreement or statement for the purpose of contradicting, varying, adding or subtracting from its terms. It has been held that it would be inconvenient that matters in writing made by advice and on consideration, and which finally import the certain truth of the agreement of parties should be controlled by averment of the parties to be proved by the uncertain testimony of slippery memory. It has been held that when parties deliberately put their agreement into writing, it is conclusively presumed, between themselves and their privies, that they intended the writing to form a full and final statement of their intentions, and one which should be placed beyond the reach of future controversy, bad faith and treacherous memory”.

24. On the above factual and preposition of law, he would pray for allowing the appeal and would submit that defendants be directed to execute the sale deed in his favour.
25. Learned Sr. counsel appearing on behalf of Respondent Nos. 2, 2(a), and 2(b) would submit that the learned trial Court has rightly recorded the finding after appreciating the evidence that if a party is in a position to dominate the will of other and used that position it would fall under undue influence as per Section 16(2) of the Contract Act. He would rely upon the judgment of Hon’ble Supreme Court in case of **Ladli Prasad vs. Karnal Distillery Company AIR 1963 SC 1279**. He would refer to paragraph No. 26 which reads as under;-
  26. 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*

I.L.R (1932) L.R. 59 I.A. 147, 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 re-opened 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 provision of the Code, prescribing the right to prefer a second appeal, and the High Court has no 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" (Mussumant Durga Choudhrai v. Jawahir Singh Choudhri (1890) L.R. 17 I.A. 122 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 placing the onus wrongly 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.

- 26.** He would further submit that as per agreement between Union of India and Bastar Estate, the Ruler's property is his private property and is succeeded by Ruler and not by Hindu Succession Act as such it is incumbent for the plaintiff before entering into an agreement to seek necessary permission as required by Government of India notification issued on October 1954. In absence of any permission the agreement is *void ab initio*. He would further submit that

the suit property is Ruler's property and in view of judgment passed by Hon'ble Division Bench of this Court on 04.10.2019 the Ruler's property cannot be disposed of for their own advantage and the private properties vested in them in their capacity as Ruler should pass to their successors intact. He would further submit that since there was no valid agreement and the fact that plaintiff has failed to perform his part of contract, the learned trial Court has rightly rejected the suit. He would further submit that the power of attorney is under undue influence and there was sufficient evidence placed on record and from the fact that power of attorney was executed on 17.08.1983 and agreement to sell was executed on 20.08.1983 which itself creates doubt over the execution of power of attorney as well as agreement. Learned Sr. counsel would further submit that the plaintiff was inducted as a tenant about 20-22 years prior to execution of sale deed; therefore, he has to show how his nature of possession has altered from the tenant into that of a transferee. The plaintiff has failed to establish this fact by recording cogent evidence before the learned trial Court. He would further submit that the plaintiff has failed to prove that he was delivered possession in part performance of contract or he being already in possession, as lease, continued his possession in part performance of agreement to purchase the suit land. Reliance was placed in the matter of **D.S. Parvathamma vs. A. Srinivasan 2003 (4) SCC 705**. On above foundation learned Sr. counsel would pray for dismissal of appeal with heavy costs.

27. I have heard learned counsel for the parties, perused the document with utmost satisfaction.
28. From the facts, evidence and law on the subject, it is quite vivid that three points have to be determined by this Court;-
  - (1) Whether the findings recorded by the learned Court below that power of attorney executed on 17.08.1983 suffers from undue influence, coercion is legal and justified?
  - (2) Whether the suit property is Ruler's property and their alienation is not permissible?
  - (3) Whether the findings recorded by learned trial Court that plaintiff has failed to prove readiness and willingness to perform his part of contract is legal and justified and does not suffer from any perversity or patent illegality which warrant interference?.

**Point no. 1**

29. Before advertng to point to be determined by this Court it is expedient to refer to Section 16 of the Contract Act which is extracted below:-

**Section 16:- 'Undue influence' defined.—**

(1)A contract is said to be induced by 'undue influence' where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other. 'Undue influence' defined.—(1) A contract is said to be induced by 'undue influence' where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other."

(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another—

(a) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or

(b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall be upon the person in a position to dominate the will of the other. Nothing in the subsection shall affect the provisions of section 111 of the Indian Evidence Act, 1872 (1 of 1872).

(a) A having advanced money to his son, B, during his minority, upon B's coming of age obtains, by misuse of parental influence, a bond from B for a greater amount than the sum due in respect of the advance. A employs undue influence. (a) A having advanced money to his son, B, during his minority, upon B's coming of age obtains, by misuse of parental influence, a bond from B for a greater amount than the sum

due in respect of the advance. A employs undue influence."

(b) A, a man enfeebled by disease or age, is induced, by B's influence over him as his medical attendant, to agree to pay B an unreasonable sum for his professional services, B employs undue influence. (b) A, a man enfeebled by disease or age, is induced, by B's influence over him as his medical attendant, to agree to pay B an unreasonable sum for his professional services, B employs undue influence."

(c) A, being in debt to B, the money-lender of his village, contracts a fresh loan on terms which appear to be unconscionable. It lies on B to prove that the contract was not induced by undue influence. (c) A, being in debt to B, the money-lender of his village, contracts a fresh loan on terms which appear to be unconscionable. It lies on B to prove that the contract was not induced by undue influence."

(d) A applies to a banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence.] (d) A applies to a banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence.]"

30. Learned counsel for the plaintiff would submit that there is no material placed on record to establish that the power of attorney has been given in favour of the defendant no.5 Vidyasagar Tiwari under undue influence, as such finding recorded by the trial Court is perverse and deserves to be set aside by this Court.
31. Per contract, learned Sr. Counsel for respondent No. 2, 2(a) and 2(b) would submit that there is sufficient evidence with regard to execution of power of attorney under undue influence. From bare perusal of the evidence, it is quite vivid that the Hariharchandra Bhanjdeo/ defendant no.3 has stated before the trial Court that Vidyasagar Tiwari, used to get signature in the blank paper and

sometime in the written document but its contents were not explained to him as the defendant no.1 has also supported him, therefore, he could not make complaint to anybody. He has also stated that there was quarrel between Bharatchandra Bhanjdeo and Vidyasagar Tiwari, therefore, he was removed from the palace. He has stated that Bharatchandra Bhanjdeo was the last Ruler of Bastar District and he was suffering from mental disorder, he was getting regular treatment from different places as recorded in the evidence. Rajmata Krishnakumari Devi W/o. Bharatchandra Bhanjdeo has also reiterated the same evidence which remain unrebutted and she has further clearfield that before her marriage, Maharaja was undergoing treatment. This witness to demonstrate that the power of attorney was executed under undue influence and explained in her evidence about the conduct of Vidyasagar Tiwar and his behavior with defendant no.2 and other family members. She has also stated that the suit property was undervalued which is also because under undue influence of Vidyasagar Tiwari. Ghanshyam Mishra (DW-3) has also reiterated the evidence about undue influence of Vidyasagar Tiwar, also clarified that Vidyasagar Tiwari creates pressure on the family of Bharatchandra, Deveshchandra, Harihar, Krishna Kumari Devi and without his permission no one was allowed to meet them. If anybody meets them without his permission, then he used to beat Bharaatchandra Bhanjdeo and he was deprived from money also. He has further stated that Vidyasagar Tiwari used to take decision without anybody's consultation, there was quarrel with Bharatchandra Bhanjdeo as he has got signature forcefully in some paper. DW-3 has further stated that Vidyasagar Tiwari has got registered property in the name of Smt. Rama Vashnikar, Rajesh Tiwari, one Sarjupari Bhrahman Samaj and his name also but mutation cannot be done as property of Ruler's cannot be sold out. He has further stated that suit property is within palaces premises. In the cross-examination at para-19, it has further been brought on record that Vidyasagar Tiwari used to manhandle the family members, two or three occasions this has happened before him also and thereafter the family members were kept in locked room. It has been empathetically denied that Vidyasagar Tiwari has not done any tortuous act against the family member. The defendant no. 2 in the written statement has placed the circumstances to prove that defendant no. 5 was in a dominating position, and power of attorney was written under undue influence but the plaintiff has neither amended the pleadings nor adduced evidence to demonstrate that power of

attorney has been written by the defendant no. 1 to 4 on their own sweet will without undue influence. From the evidence, material on record, it is quite vivid that Vidyasgar Tiwari was tortuous in a fiduciary relationship with the defendant no. 1 to 4 and he was in a dominating position and the fact that Bharatchandra Bhanjdeo was suffering from mental disorder, it is quite clear that power of attorney was written under undue influence of defendant no. 5.

32. Hon'ble Division Bench of Madras High Court in the case of **Andalammal vs. Rajeswari Vedachalam (daced) and others AIR 1985 Mad 321**, has held at paragraph 21 and 22 as under:-

21. A close examination of the said provision reveals that under circumstances set out in S. 16(1) a case of undue influence is established. If the circumstances set out either in sub Cl. (a) or sub-Cl. (b) in sub-S. (2) are found to be established, a person is deemed to be in a position to dominate the will of another. Sub-sec. (2) is common to sub-S. (1) and sub-S. (3) of S. 16. As between sub-S. (1) and sub-S. (3), the common factor is that one of the parties was in a position to dominate the will of the other. Sub-S. (1) and sub-S. (3) cover two different fields, though, at times, one may overlap the other. To attract sub-S. (1) two things should be established, namely, (a) one of the parties was in a position to dominate the will of the other, and (b) he used that position and obtained an unfair advantage over the other; while to attract sub-S. (3)(a), the person was in a position to dominate the will of the other, and (b) the transaction appeared on the face of it or the evidence adduced was to be unconscionable. There is another vital difference between sub-sec. (1) and sub-S. (3). In sub S. (3), if the two ingredients are established, the burden of proof that contract was not induced by undue influence shall lie upon the person to dominate the will of the other. This presumption is absent in sub-S. (1). This, in our view, is the proper reading of S. 16 of the Contract Act. Another special feature is found in S. 16(3); i.e, if it is established that a

person who is in a position to dominate the will of another entered into a contract with him and if the transaction appeared either on the face of it or on the evidence adduced to be unconscionable, the burden is upon the person who was dominating the will of another to prove that such contract was not induced by undue influence. The word 'shall' found in S. 16(3) indicates that the presumption is mandatory. In the instant case, if the ingredients referred to in S. 16(3) were to be established by the appellant the burden would be on the respondents to satisfactorily prove that Ex. B2 sale was not induced by undue influence. The concomitant position is that if the burden is not discharged, the presumption shall prevail. It is further significant to notice that either on the evidence or on the face of transaction it is enough if it appeared to be unconscionable. In other words, it is enough for the appellant to substantiate that the transaction was prima facie unconscionable and that she was under the domination of her husband, P.W 4 and the first respondent's manager, D.W 4. To put it differently, positive proof that the transaction is unconscionable is dispensed with to raise a statutory presumption and the statutory presumption would be in force until the burden is rebutted. According to the learned counsel for the appellant, this import of clause (3) of S. 16 was not noticed by the learned Judge of this Court and the result was learned Judge threw the burden wrongly on appellant. This, according to the learned counsel, has to a greater extent vitiated the judgment of the learned Judge. He would further urge that there are enough circumstances to project a prima facie case as envisaged by S. 16(3) and that in any event, there is ample evidence in this to support misrepresentation, coercion and fraud.

22. S. 16(2) says what is domination. If a person

should hold either a real or apparent authority over the other, he would be deemed to be in a position to dominate the will of another (emphasis by us). We shall not lose the significance of the expression 'real' and 'apparent' employed in that sub-section. In our view, even if the circumstances were to project that one had apparent authority over the other, it would be deemed that person dominated the will of the other as envisaged by sub-S. (2) of S. 16. So too, if a person were to stand in a fiduciary relationship with the other, the former would be deemed to have dominated the will of the other. We are not referring to sub-S. (b) as that is not relevant in this case. The plain meaning of sub-S. (2) clearly points out that the relationship between the two has no relevance at all though it may in certain cases project a prima-facie case.

33. Hon'ble High Court of **Madhya Pradesh in the matter of Kasturchand Chhotmal vs. Kapurchand Kewalchand AIR 1975 MP 136**, has held thus in *In Satish Chandra Chateriee v. Kumar Satish Kantha Roy*, AIR 1923 PC 73 it was held as under :--

"Charges of fraud and collusion must no doubt be proved by those who make them by established facts or inferences legitimately drawn from those facts taken together as a whole. Suspicions and surmises and conjectures are not permissible substitutes for those facts or those inferences but that by no means requires that every puzzling artifice or contrivance resorted to by one accused of fraud must necessarily be completely unravelled and cleared up and made plain before a verdict can be properly found against him. If this were not so, many a clever and dexterous knave would escape.

In view of the above case law it may be observed that the appellant has placed on record; whatever material as was available to draw inference that the gift deed,

Ex. P-9, was executed by Mst. Soni Bai under the undue influence of the respondent. The burden, therefore, shifted on the respondent to prove that the said document was executed by Mst. Soni Bai by her free will and not under any undue influence. This could have been done, had the respondent appeared in the witness box and stood the test of cross-examination. As the respondent failed to discharge the burden cast upon him we hold that Mst. Soni Bai executed the gift deed under undue influence and, therefore, it is not valid and binding on the appellant”.

**34. Hon'ble High Court of Mysore in the matter of Smt. Smt. Chinnamma And Ors. vs The Devanga Sangha And Ors AIR 1973 Mys 338;-**

**17.** The next ground urged on behalf of defendants 1 and 2 is that Exhibit P-I had been obtained by the President and the Secretary of the plaintiff by exercising undue influence over Kenchamma and that Kenchamma had not voluntarily executed the said document. The Court while dealing with a case in which the validity of a gift is challenged on the ground that it is vitiated by undue influence, should bear in mind two factors, viz., whether the donor and donee stood in such a position that the donor was able to dominate over the will of the donee and whether the donor utilised the said position to obtain an unfair advantage over the other Section 15(2) of the Contract Act provides a special presumption that in cases falling under Clauses (a) and (b) thereof, a person is deemed to be in a position to dominate over the will of the other. In particular clause (b) states that when a person makes a contract with a person whose mental capacity is either temporarily or permanently affected by reason of age, illness or mental or bodily distress, the former is deemed to be in a position to dominate over the will of the latter. Whereas ordinarily the burden of

establishing undue influence is on the person alleging it, in a case falling under Sub-section (3) of Section 16 of the Act i.e., where a person is in a position to dominate the will of another enters into a transaction with him and the transaction either appears on the face of it or is proved to be unconscionable the burden of proving that it was not induced by undue influence lies on the person in a position to dominate the will of the other. In *Ladli Parshad v. Karnal Distillery Compay*, the Supreme Court explained the doctrine of undue influence as follows :--

"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 applied 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 Section 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."

**18.** In the instant case, it is clear from the evidence discussed above that Kenchamma was suffering from cancer on 28-12-1960 on which date it is alleged that Exhibit P-I was executed, that it was known to P. W. 3, the Clerk of the plaintiff and that she died of the said disease on 7-3-1961. It appears to us to be quite probable that Kenchamma knew that she was suffering from the said disease even for about a few weeks prior to 28-12-1960. Defendant 1 has stated in her deposition that Kenchamma was ill from November 1960. It is quite natural that Kenchamma must have been suffering from bodily and mental distress on account of the dreadful nature of the disease, and as a consequence her mental capacity must have been affected during that period. The statement of defendant 1 in her evidence which is corroborated by D. W. 2 that Kenchamma's mental capacity had been affected during that period appears to be quite probable. During that period when Kenchamma's mental capacity was affected the plaintiff secured the gift deed from her. We are of the opinion that the case clearly comes under Clause (b) of Sub-section (2) of Section 16 of the Act. It is also quite clear that the transaction is of an unconscionable nature because Kenchamma had purported to part with all the known resources she had under Exhibit P-I and that she was driven to the necessity of applying for monetary assistance to the plaintiff to meet the medical bills immediately after the date of Exhibit P-I. Under these circumstances, Sub-section (3) of Section 16 would clearly be attracted throwing the burden of proving that the transaction in question was not induced by undue influence on the plaintiff who is deemed to be in a position to dominate over the will of Kenchamma by virtue of Sub-section (2) of Section 16 of the Act. On a careful assessment

of the evidence adduced in the case, we are satisfied that the plaintiff has not discharged the burden of proving that the gift under Exhibit P-I was not induced by undue influence. It is argued by Sri S. Rangaraj, the learned counsel for the plaintiff, that defendants 1 and 2 had not disclosed how and in what manner such undue influence was brought to bear upon Kenchamma. We feel that there is no such obligation on them in this case to which Sub-section (3) of Section 16 of the Act is applicable. It is well to remember here the observations of the Supreme Court in paragraph 25 in *Ladli Parshad's* case that the reason for the rule in the third sub-section in Section 16 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. The way in which we have approached and dealt with the evidence in this case, is in accord with the decision of the Supreme Court in *Lakshmi Amma v. Talengaia Narayana Bhatta*, in which the Supreme Court was concerned with a settlement deed under which the settlor, when he was suffering from diabetes and other ailments, had purported to settle all his property on one of the grandsons to the exclusion of his own sons and other grandsons without making sufficient provision for the maintenance of his third wife and debarring himself from dealing with the property during his lifetime. One additional factor available in this case is that Kenchamma was an illiterate lady who knew only how to sign her name and had no independent advice. Further, the nature of advice said to have been given to her by P. W. 4 as alleged in the plaint is kept back from the Court.

**19.** One other argument of Sri Rangaraj, the learned counsel for the plaintiff, requires to be noticed here.

He argued that neither the President nor the Secretary of the plaintiff derived any advantage personally from the transaction and that it was the plaintiff who was benefited thereby; He, therefore, submitted that Section 16 of the Act could not apply. We cannot accede to the above submission. It is not correct to hold that Section 16 is attracted only when the party in a position to or deemed to be in a position to dominate the will of the other derives a personal advantage from the transaction. The said section is also applicable to case in which the executant is made to part with his property in favour of another in whom the person in a position to or is deemed to be in a position to dominate the will of the other is interested provided the other requirements of the section are satisfied. In coming to the above conclusion, we have relied upon the decision of the Allahabad High Court in *Sital Prasad v. Parbhu Lal*, (1888) ILR 10 All 535 in which the facts were as follows: The plaintiff who on the death of the widow of his brother became entitled to the estate of the deceased, found himself resisted in his claim by wealthy relatives. He was a man without means. The defendant took him to his house, kept him there, found him all the money for the purpose of carrying on his litigation with his relatives, in which the plaintiff succeeded. While the litigation for mutation of names in respect of the property was pending in the revenue Court and while the plaintiff was residing with the defendant, he executed a sale deed in favour of defendant's brother for the nominal consideration of Rs. 9,500/- on half the property he claimed, and again, shortly after the mutation case had terminated in his favour, he executed a deed of endowment of the remaining half in favour of a temple founded by the ancestor of the defendant in which the defendant

was interested, and the result was that plaintiff was left as poor as he was when he first came into the defendant's hands. Plaintiff sued for cancellation of the deed of endowment on the ground that the same had been obtained from him by the exercise of undue influence and by means of fraud and obtained a decree. On appeal by the defendant it was held that looking at all the facts, such a relation between plaintiff and defendant in the course of the year 1885 had been established as to cast upon the latter the obligation of satisfying the Court that the transaction, which was given effect to by the deed of endowment, was an honest and bona fide transaction and one that ought to be upheld even though the advantage under the transaction was not derived by the defendant himself. Hence, the fact that in the present case the benefit is derived by the plaintiff in which its President and Secretary were interested and they entered into the transaction with the donor is enough to attract Section 16 of the Act. We are satisfied from the evidence placed before the Court that the President and Secretary of the plaintiff who were in a position to dominate or were deemed to be in a position to dominate the will of Kenchamma, have used their position to obtain an unfair advantage over her and to secure the gift deed Exhibit P-I in favour of the plaintiff in which they were interested.

**20.** After giving our anxious consideration to all the facets of the case presented before us, we hold that the execution of the gift deed Exhibit P-I is not duly proved and even if it is executed by Kenchamma, she had done so on account of the undue influence, and, therefore Exhibit P-I is void. The suit of the plaintiff for declaration of its title should fail.

- 35.** The contention of learned counsel for the plaintiff/appellant is that Section 92 of the Evidence Act provides exclusion of evidence of oral agreement and

would submit that in the present case when the agreement which is reduced to the form of document (Ex.P-1) has been proved as per section 91 of the Evidence Act, no evidence of any oral agreement or statement shall be admitted as between the parties to any such instrument or their representative in interest for the purpose of contradicting, varying, adding to or subtracting from its terms is not applicable in the present facts and circumstances of the case, as learned trial Court has not disputed the execution of the agreement but has questioned the foundation of execution of agreement i.e. power of attorney issued in favour of the defendant no. 5 as such the judgment cited by learned counsel for plaintiff in the case **V. Anantha Raju and Another vs. T.M. Narasimhan & others (supra)** is not applicable to the present facts of the case.

- 36.** Learned trial Court after analyzing the evidence, material on record and considering the law on the subject, has held that power of attorney has been written under undue influence, therefore, the finding recorded by learned trial Court with regard to point No. 1 is legal, justified and does not warrant interference.

**Point No.2**

- 37.** Defendant No.2 in the written statement has categorically pleaded that suit property is Ruler's property and cannot be alienated and it will be succeeded to generation to generation and to substantiate they adduced evidence and all the witnesses have categorically have stated in their examination-in-chief that suit property is Ruler's land which was not rebutted through evidence or through amending the pleading, therefore, the contention of defendant No. 2 that suit land is Ruler's land even in the cross examination the plaintiff witness No.1 has admitted that suit property is a Ruler's property. Learned trial Court while deciding the issue no 5(a) (b) has categorically recorded the findings that in view of no rebuttal against the notification no. EF 57/7/70-EOLL-III dated 11.07.1970, it is quite vivid that suit land is palace property and cannot alienate but has not answered this issue on the count that the trial Court it has already decided validity of the power of attorney wherein it has been held that power of attorney has been executed under undue influence, therefore, subsequent agreement is also null and void, as such it is not required to give any finding on this issue. The suit land is a Ruler's property has held by the Division Bench of this Court in FA No. 119 of 2017 Smt. Krishna Kumari Devi

and other vs. Hariharchandra Bhanjdeo at paragraph 60,76 and 77 as under;-

**60.** The documents discussed above and the pleadings of the party as well, would lead us to an indisputable fact that the properties involved in the present suit were private properties of Maharaja of Bastar.

**76.** It is, thus, indisputably and fairly well settled that private property of a Ruler was to remain with him under the covenant/ agreement executed with the GOI and the said property has to pass on from one Ruler to another in terms of Article 5 of the agreement. It would pass on to the next Ruler under the principle of Lineal Male Primogeniture and the private properties would not be treated as the joint family property or HUF property of the Ruler. It is also settled that by virtue of section 5(ii) of the Act, 1956, the provisions of the said Act would not apply to the suit property as under the covenant, it would descent to a single heir under the terms of the agreement executed between the Ruler of Bastar and the GOI. It is also settled that the Gaddi and the property would pass on the next Ruler and would thereafter pass on the legal heirs of the last Ruler.

**77.** The private property of the Ruler shall not be treated as HUF property nor the Act, 1956 would apply to the said property for yet another reason inasmuch as vide Ex.P/74, which is a letter issued by the Government of the Central Provinces and Berar dated 19.07.1948, it was specifically provided that the **34.** Muafi Rights created by the Ruler i.e. Maharaja Parvir Chandra Bhanjdeo for the maintenance of his brother in 27 villages are allowed. It is, thus, apparent that if the other family members had any right over the private property by birth or by survivorship there was absolutely no necessity to create Muafi Rights for the maintenance of the Ruler's brother in 27 villages. It is

clearly discernible that the brothers of the Ruler were treated as a separate entity at the time of merger and they had no claim to the private property of the Ruler as they were separated by granting them Muafi Rights in the lands for their maintenance. The brothers of the Ruler have, thus, no right over the properties of the Ruler which would pass on the next Ruler under law of primogeniture.

38. Thus, from above stated evidence, material on record and the law laid down by the Hon'ble Division Bench of this Court, it is clear that suit land is Ruler's property and cannot be alienated, as such the findings recorded by the learned trial Court is legal, justified and does not warrant interference.

**Point No.3**

39. Learned trial Court while deciding the issue No. 9 has recorded a finding that plaintiff has failed to perform his part of contract as on account of dispute he has stopped payment of cheque amount as such it cannot be said that plaintiff was ready and willing to perform his part of contract. This finding is legal, justified and does not suffer from perversity or illegality and inconformity with the law laid down by the Hon'ble Supreme Court in the matter of **Shenbagam and others vs. K.K. Rathinavel decided in Civil Appeal No. 150 of 2022 decided on 20.01.2022.**

27. It is settled law that even in the absence of specific plea by the opposite party, it is the mandate of the statute that the plaintiff has to comply with Section 16(c) of the Specific Relief Act and when there is non-compliance with this statutory mandate, the Court is not bound to grant specific performance and is left with no other alternative but to dismiss the suit. It is also clear that readiness to perform must be established throughout the relevant points of time. "Readiness and willingness" to perform the part of the contract has to be determined/ascertained from the conduct of the parties.

40. The findings recorded by the trial Court that the plaintiff failed to perform his part of contract is legal, justified and does not warrant interference, even the

trial Court has recorded the findings that even if, plaintiff establishes that he is ready and willing to perform his part of contract still he cannot claim any relief as the power of attorney which is the basis of agreement has been held to be executed under undue influence, as such also the claim of the plaintiff for specific performance of contract is not tenable. Thus, all the points determined by this Court stands decided against the plaintiff as no perversity or illegality in the judgment and decree passed by the learned trial Court is brought on record which warrants interference by this Court. Accordingly, the first appeal being devoid of merit is liable to be dismissed and it is **dismissed**. No order as to the cost.

41. A decree be drawn up accordingly.

Sd/-

**(Narendra Kumar Vyas)**  
**Judge**

Santosh