



**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**R.S.A. No. 266 of 2002**

**Date of decision: 29. 3. 2014**

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**Murat Ram** **...Appellant/Defendant**

**Versus**

**Bhadar Singh** **..Respondent/Plaintiff**

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**Coram**

**The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.**

**Whether approved for reporting ?<sup>1</sup> Yes**

**For the Appellant : Mr. Sunil Mohan Goel, Advocate.**

**For the Respondent : Mr. Bhupinder Gupta, Senior Advocate,  
with Mr. Janesh Gupta, Advocate.**

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**Tarlok Singh Chauhan, Judge (Oral)**

This regular second appeal has been preferred by the appellant/defendant against judgment and decree dated 11.3.2002 passed in Civil Appeal No. 103 of 2000 by learned District Judge, Kullu, H.P. whereby he reversed the judgment and decree dated 29.9.2001 passed by learned Senior Sub Judge, Kullu, H.P. in Civil Suit No. 36 of 1995.

2. The original plaintiff Smt. Baldassi was the real sister of defendant Keshav Ram and instituted the suit claiming herself to be co-owner in possession of the suit land as detailed in paras 1 to 4 of the head note of the plaint and was further mortgagee in possession of the land as had been mentioned in para No.5 of the head note of the plaint to

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<sup>1</sup> *Whether reporters of Local Papers may be allowed to see the Judgment ?yes*

the extent of her recorded share. She assailed the release deed dated 25.11.1992 qua the suit land as being void, fictitious, illegal and the mutations No. 4159 and 1137 were also sought to be declared as illegal and not binding upon her. Smt. Baldassi died during the pendency of the suit and was succeeded by her son and daughter, who were arrayed as plaintiffs. Her case was that on 10 Manghar 2049 she as a guest visited her brother defendant where she fell ill. The defendant on the pretext of providing medical help, brought her to Kullu for getting her admitted in the Kullu hospital, but he with ulterior motive to grab her property, took her to different places and obtained her thumb impressions on papers. He did not admit her in the hospital, rather took her back to her house on the ground that admission to the hospital was not advised. The plaintiff during her life time had never come to Kullu. In September, 1994 the plaintiff requested the defendant to partition the land, but he dis-owned her ownership. Then on collection of revenue records, the plaintiff came to know fraud and deception played by the defendant upon her by obtaining the release deed in his favour. The so called release deed was claimed to be an outcome of fraud and termed to be forged and fictitious and never executed by the plaintiff. It was alleged that the defendant failed to admit the claim of the plaintiff, therefore, the present suit for having her declared as co-owner in possession of the land and mortgagee in possession of the land described in para 5 of the head note of the plaint. In alternative a plea for possession was also made.

3. The defendant admitted the plaintiff to be his sister and was co-owner in possession of the suit land to the extent of her share, but claimed that she had relinquished her rights by executing release deed

dated 25.11.1992 in his favour and had delivered the possession to him. It was alleged that the plaintiff was not in possession of the suit land and the plaintiff had relinquished her right in the suit land of her free volition and Will. It was denied that the plaintiff had come to his house and had fallen ill or had been taken to Kullu for having admitted in the hospital. The defendant denied the allegations of having obtained the release deed by way of fraud, misrepresentation or obtaining her thumb impressions wrongly. Rather it was claimed by the defendant that plaintiff in presence of the witnesses of her own in a sound disposing mind had executed the document of relinquishment. Rest of the averments were stated to be wrong and accordingly denied.

4. On the pleadings of the parties, the learned trial Court on 27.5.1997 framed the following issues:

1. Whether the release deed dated 25.11.1992 is the result of fraud or deception and is liable to be set aside as alleged?  
OPP
2. If issue No.1 is proved, whether the plaintiffs are owners in possession of the suit land as alleged? OPP
3. Whether the plaintiffs are entitled to the relief of possession as prayed? OPP
4. Whether the plaintiffs are entitled to the relief of injunction?  
OPP
5. Whether plaintiffs have no cause of action? OPD
6. Whether plaintiffs have no locus standi to file the present suit? OPD
7. Whether plaintiffs are estopped to file this suit by their act and conduct? OPD
8. Whether the suit is not maintainable in the present form?  
OPD
9. Relief.

5. After recording the evidence, the learned trial Court dismissed the suit. Against this judgment and decree, the plaintiff/respondent preferred an appeal before the learned lower Appellate Court, who vide his judgment and decree dated 11.3.2002 allowed the appeal and accordingly the suit filed by the plaintiff was ordered to be decreed. It is this judgment and decree, against which the defendant/appellant has preferred the present appeal.

6. On 28.6.2002 this Court admitted the appeal on the following substantial questions of law:

1. Whether the Ld. Appellate Court has erred in decreeing the suit of the plaintiff and not upholding the judgment and decree of the trial Court by declaring that Ext.DW-2/A was a result of fraud and mis-representation without the plaintiffs being able to prove fraud and misrepresentation?
2. Whether a suit of fraud and mis-representation during the life time of the person executing the document is to be filed by the concerned person only or other persons can also join the case as plaintiff and use the name of principle plaintiff as a shadow to serve their own interest?
3. Whether the learned First Appellate Court has misread and mis-appreciated the evidence both oral and documentary on record and the findings are thus based on conjectures and surmises?

7. I have heard Mr. Sunil Mohan Goel, learned counsel for the appellant and Mr. Bhupinder Gupta, Senior Advocate assisted by Mr.

Janesh Gupta, Advocate, learned counsel for the respondent and have also gone through the records carefully.

8. At the outset, it is fairly conceded by learned counsel for the appellant that the substantial question of law No.2 as framed does not arise for consideration and, therefore, he confines his arguments to the substantial questions of law No. 1 and 3. Since the substantial questions of law No. 1 and 3 are inter-related and inter-connected, therefore, I proceed to dispose of the same through common reasoning.

9. Since the original plaintiff Smt. Baldassi had unfortunately expired before she could enter the witness box. However, one of the legal representatives i.e. Bhader Singh appeared as PW-1 and stated that his mother had been residing with him and her last rites had been performed by him. He thereafter gave detailed version as to how the plaintiff had visited the house of the defendant where she had fallen ill. He has further narrated the incident of her having been duped on the pretext of her being treated in the hospital and her thumb impressions had been obtained on various blank papers. He has categorically stated that no relinquishment deed had been executed by his mother of her own in favour of the defendant and therefore, the mutations to this effect were wrong and illegal. He further claimed to be in possession of the suit land to the extent of the share of his mother.

10. PW-2 Mast Ram had claimed the possession of the plaintiff over the suit land and further stated that land revenue to him was being paid by the plaintiff. The statement of this witness assumes significance in view of the fact that he is Chowkidar and collecting the land revenue.

He has categorically denied that the possession of the suit land is with the defendant or that he had no knowledge regarding the possession.

11. PW-3 Pritam Singh also states that the possession of the suit land is with the plaintiff and it is he, who is paying the land revenue. He has further deposed that the mother of the plaintiff had been remaining ill and was provided medical assistance by the plaintiff. He denied the suggestion that the plaintiff was not cultivating the suit land.

12. PW-4 Radha Devi, the other plaintiff in this case has also deposed that her mother Smt. Baldassi during her life time was possessing the land herself and thereafter it was plaintiff No.1 Bhaider Singh, who is cultivating the same.

13. On the other hand, the defendant examined himself as DW-1 and claimed that Smt. Baldassi had relinquished her right, title or interest qua the suit land by executing the document mark-X. This was done because she was having sour relationship with the plaintiff. According to this witness, the relinquishment deed had not been obtained by him by way of fraud, rather the same had been executed by deceased Baldassi of her free volition. This witness conceded that the plaintiff No.1 was the only son of Smt. Baldassi and also conceded that Smt. Baldassi had no quarrel with her son. He further admitted Smt. Baldassi to be an illiterate woman, who only understood the local language of Kullu. He denied the suggestion that Smt. Baldassi had fallen ill, though admitted that she had come to his house as guest in the year 1992. He further denied the suggestion that he had an intention to grab the property in question and on the pretext of providing treatment to the deceased, got fraudulently papers prepared on the basis of which the release deed mark-X

(DW-2/A) was scribed. He admits that he was present when document mark-X (Ex.DW-2/A) was scribed. He claimed that he had called witnesses Ghughru while Baldassi had called Hira Lal as her witness. He denied that the land of Smt. Baldassi was being cultivated by her son who was still in possession of the same.

14. DW-2 Chuhru Ram is petition writer and is alleged to have scribed the release deed Ex.DW-2/A. He states that the contents of the relinquishment deed were read over to Smt. Baldassi, who appended her thumb impressions in presence of Ghughru Ram and Hira Lal, who had witnessed the document. He claimed to have scribed the document on the asking of Smt. Baldassi and admitted that he did not know her personally.

15. DW-5 Hira Lal is alleged to be one of the attesting witness of the deed Ex.DW-2/A. As per his statement, he became the witness of the document on the asking of Smt. Baldassi, who give her land to the defendant vide relinquishment deed Ex.DW-2/A. It is stated by this witness that Ex.DW-2/A was made and scribed at the behest of Smt. Baldassi and after writing it, the contents thereof were explained to her and it is thereafter that she appended her thumb impression. He also put his thumb impression alongwith another witness, who appended his signature. Thereafter, it was produced before the Tehsildar where again Smt. Baldassi acknowledged having given the land vide relinquishment deed in favour of the defendant. This witness admitted that Smt. Baldassi was in fact a resident of village Buaee. As per him, Smt. Baldassi had not given the description of the fields and had only stated that she is giving the land of Kuhu to the defendant. He has further deposed that Smt.

Baldassi was not carrying any parcha (revenue record) at that time. She had herself giving the description of land and such description of land was not given to the scribe by Keshav Ram, defendant. He denied that the document was never scribed by Smt. Baldassi. This witness conceded that Smt. Baldassi had not mentioned how many khata khatauni numbers were given to the defendant nor she had disclosed the area of the land given.

16. DW-4 Devi Dass is the son of one of the alleged attesting witness Ghughru and has identified the signature of his father on Ex.DW-2/A. DW-6 Bihari Lal is the Registration Clerk of Sub Registrar, Kullu, who speaks about the registration of the document Ex.DW-2/A in the office of Sub Registrar, Kullu. DW-3 Mohar Singh is the step-son of Smt. Baldassi and claimed that she had settled in the house of his father Chet Ram. He claimed that she had given land to the defendant, but further clarified that he was not present at the time of execution of the document Ex.DW-2/A. However, he admitted that Smt. Baldassi was served and looked after by her son Bhader Singh and her land was being cultivated by Bhader Singh. He further admitted that during her life time, Smt. Baldassi remained in possession of the land.

17. Thus, what emerges from the evidence on record is that though the defendant has produced the scribe, one attesting witness and son of second attesting witness to prove on record the document Ex.DW-2/A. However, their testimonies have to be tested alongwith the other evidence brought on record coupled with the surrounding circumstances and peculiar facts of the case. At this stage, the testimony of DW-5 Hira Lal has to be borne in mind as this witness had very categorically and in

unequivocal terms stated that Smt. Baldassi was not possessed any parcha (revenue record) at the time of execution of the document. He has further qualified that no description of the land was provided by Keshav Ram to Chuhru Ram, petition writer. Chuhru Ram, petition writer in turn states that Ex.DW-2/A was in fact scribed by him at the instance of Smt. Baldassi. It has also come on record that Smt. Baldassi was totally illiterate and could only understand the local language of Kullu. Therefore, taking into account all the facts and circumstances, it is mystical as to how the details of the land with khata, khatauni number and area alongwith proper description has come to be recorded in the document Ex.DW-2/A. The translated version of Ex.DW-2/A reads thus:

*"I, Baldassi d/o Bihu son of Tulsu Rajput, resident of Choil, Phati Shamshi aged 55 years, land Kitas nine measuring 13-14-0 bighas land revenue 1.67 paise, khata khatauni No. 120/228 vide jamabandi for 1986-87 situate in phati Bhumteer, Kothi Tarapur, Tehsil and District Kullu 1/12 shares, land measuring 1-2-16 bighas mortgagor possessed by mortgagee and land of khasra Nos. 846, 848 kita 2, land measuring 0-6-0 gairmumkin abadi, khata khatauni No. 69/92 1/16 share, land measuring 0-0-7 bigha vide entry in column of possession and land of khasra No. 850 measuring 7-13-0 bighas, khata khatauni No. 69 min/93 1/16 share, land measuring 0-9-1 bigha vide entry of possession and land of khasra No. 1499 measuring 1-1-0 bigha, khata khatauni No. 493/727, 1/5 share, land measuring 0-5-0 bigha, total land of both khatas, land measuring 0-15-3 per jamabandi for 1984-85, phati Shamshi, Kothi Khokhan, Tehsil and District Kullu, land measuring 1-17-19 bighas without mortgage along with mortgagee rights of nine kitas measuring 13-14-0 bigha land revenue 1.87 paise, khata khatauni No.120/228, jamabandi for 1986-87, Phati Bhumteer, Kothi Tarapur, 1/12 share, land measuring 1-2-16 bighas qua Dharam Chand son of Lot Ram, son of Poshu mortgagor, owner and possessed as mortgagee etc....."*

From the perusal of the above translation, it does not require any great deal of imagination to conclude that Ex.DW-2/A was in fact result of fraud and mis-representation. Such deed could not have been scribed at the instance of an illiterate lady that too in absence of the revenue records with such meticulous precision.

18. The fraud or misrepresentation can further be gathered from the fact that Smt. Baldassi during her life time was in possession of the suit land. In case she had relinquished or released the same in favour of the defendant, then she would not have possessed the same. DW-3 Mohar Singh has clearly admitted that Smt. Baldassi during her life time in fact possessed the suit land. Another factor which outweighs the other evidence on record is the fact that had Smt. Baldassi of her own executed the relinquishment or release deed, then she probably would not have assailed the same. But in this case the fact remains that Smt. Baldassi herself during her life time challenged the document to be void. She has categorically stated that the existence of this document came to her notice only after she had approached the Patwari for partition and it is this time she detected the fraud and came to know that she had been duped.

19. The learned lower Appellate court has taken the note of another circumstance which fortifies the claim of the plaintiff qua fraud which is giving of wrong address of Smt. Baldassi in Ex.DW-2/A. In this document Smt. Baldassi is mentioned to be a resident of Village Choil, while as per the evidence on record, Smt. Baldassi was a resident of Buaee. Buaee is the residential village of her son. According to DW-3 Mohar Singh, Smt. Baldassi was being served and looked after by her

son i.e. plaintiff No.1 Bhader Singh, who had been cultivating her land. Similarly, DW-5 Hira Lal has also admitted that Smt. Baldassi was resident of Buace. Resultantly when this is the evidence, it has not understandable as to why the correct address of Smt. Baldassi was not reflected in Ex.DW-2/A. The findings recorded by learned lower Appellate Court to the effect that either somebody else was produced by the defendant for obtaining the document referring her to be Baldassi cannot be termed to be farfetched or imaginary.

20. Confronted with this situation, the learned counsel for the appellant would contend that since Ex.DW-2/A was registered document, therefore, presumption of truth is attached to the certificate appended by the Registrar under Section 60 (2) of the Registration Act. For this purpose, he relied upon a decision of this Court in ***Kirpa Ram and others vs. Smt. Maina, 2002 (2) Shim. L. C. 213***, He further submitted that the decision of this Court follows the well established principle of law settled in *Sennimalai Goundan and another v. Sellappa Goundan and others*, AIR 1929 Privy Council 81 and *Kanwarani Madna Vati and another v. Raghunath Singh and others*, AIR 1976 HP 41.

21. The proposition of law if dissociated with the present facts is taken into consideration, then there can be no quarrel to the arguments of the learned counsel for the appellant. However, a principle of law has to be applied in a particular fact situation and not for a theoretical purpose. The entire reading of the pleadings and the evidence clearly indicate that the original plaintiff has been duped. Smt. Baldassi though cannot be treated as 'Pardanashi' lady but still nonetheless it has to be established on record that she was whereabouts of true nature of

transaction she was entering into. The High Court of Calcutta in **Kartick Prasad Gorai and others vs. Neami Prasad Gorai and others AIR 1998 Calcutta 278** held:

*“21. In our opinion, although the protection given to a ‘Pardanashi’ woman as regards execution of a deed is not available to an illiterate man who has sufficient experience of dealing with property, we are of the view that in case of a deed executed by such a person, the fact that the contents of the deed were read over and explained to the executant must be proved by the person who wants to take advantage of such deeds. In this case in view of contradictory statement made by the alleged witnesses of the deeds as regards execution and explanation of the contents, the finding of the learned trial Court cannot be said to be wrong.”*

The reasoning given by Calcutta High Court clearly applies to the facts of the present case as it is established on record that Smt. Baldassi was a total illiterate and could only understand the local language of Kullu and there was no reason for her to have executed the relinquishment deed and above all challenged the same during her life time.

22. To counter the submissions of the learned counsel for the appellant, learned senior counsel Mr. Bhupinder Gupta, has rightly relied upon the judgment passed by this Court in **Smt. Kala Wati vs. Smt. Vidya Devi and others 2009 (3) Shim. L.C. 306** wherein the decision rendered by this Court in Kirpa Ram’s (supra) was also taken into consideration and it was held as follows:

*“15. Learned counsel appearing for the respondent submits that the document being registered, the presumption of truth is attached to the certificate appended by the Registrar under Section 62 of the Registration Act. He relies upon a decision of this Court in Shri Kirpa Ram and others vs. Smt. Maina, 2002 (2) Shim. L.C.213. He submits that this Court this decision follows the well established principle of law settled in Sennimalai Goundan and another v.*

*Sellappa Goundan and others, AIR 1929 Privy Council 81 and Kanwarani Madna Vati and another v. Raghunath Singh and others, AIR 1976 HP 41.*

16. Learned counsel has also supported the judgment of the Courts below, in particular that of the learned trial Court, by urging that merely because the parties to the lis are related that would not perse attract the principle that the defendant was in fiduciary relationship which would have influenced the plaintiff. Learned counsel has also relied upon a decision of the Madras High Court in *P. Saraswathi Ammal v. Lakshmi Ammal alias Lakshmi Kantam, AIR 1978 Madras 361* to the effect that mere bond of kinship does not establish undue influence.

17. As a general proposition of law the points urged by learned counsel appearing for the respondent are taken as an established principle of law. However, a principle of law is applied in a particular fact situation and not as a theoretical purpose. In the sequential narration of facts supported by the evidence of the plaintiff, PW-1 Kamal Kishore and PW-2 Karam Chand, the so called attesting witnesses, the narration is clear and natural. The plaintiff admits the putting of a thumb impression on the document but pleads that this was done out of love and affection to help the defendant to obtain loan for the purposes of house construction where she was to give her no objection and consent to such construction so that the defendant could raise the loan. The plaintiff has nowhere stated that she had any idea of relinquishing her share in the property. Registration of the document is of no avail to the plaintiff as the attesting witnesses themselves have stated that they were not aware about the contents of the document. They were not accompanying the defendant. How and under what circumstances the trial Court says that they being the attesting witnesses are now deposing in favour of the plaintiff and as such their testimony is not believable is a clear breach of the rule applicable for appreciation of evidence. Rejection of the evidence of these two witnesses on the ground of perversity is writ large in this case. What is the quality of deposition has not been considered. Both the Courts below have swept the principles applicable for the appreciation of evidence under the carpet without realizing its implications. Without appreciating the evidence it would but be stating the obvious that the perversity of findings on the evidence on record is writ large in this case. True that the plaintiff may not be 'pardanashi' lady in the

traditional sense when this doctrine was used for protection of such ladies in 19<sup>th</sup> and 20<sup>th</sup> century in India, but little seems to have changed with the majority of the women still labouring under the disability of illiteracy and poverty and confined. The concept of 'pardanasi' women have withered down. But whether illiterate women are now in a position to understand the true nature of the transaction they are entering into or are overwhelmed by filial affection into following their kin blindly is something which requires a deeper thought.

18. It is true and undisputed that the appellant is an illiterate lady. Even if she is not treated to be 'pardanashin' lady, what had to be established on the record was that she was aware about the true nature of the transaction she was entering into. The High Court of Calcutta in **Kartick Prasad Gorai and others vs. Neami Prasad Gorai and others**, AIR 1998 Calcutta 278 held:-

"21. In our opinion, although the protection given to a 'Pardanashi' woman as regards execution of a deed is not available to an illiterate man who has sufficient experience of dealing with property, we are of the view that in case of a deed executed by such a person, the fact that the contents of the deed were read over and explained to the executant must be proved by the person who wants to take advantage of such deeds. In this case in view of contradictory statement made by the alleged witnesses of the deeds as regards execution and explanation of the contents, the finding of the learned trial Court cannot be said to be wrong."

23. The learned counsel further placed reliance upon a judgment of this Court in **Bhoop Ram vs. Dharam Das Latest HLJ 2009 (HP) 560** where Kirpa Ram's case was again considered by this Court and it was held:

12. Reliance is placed on decision of this Court in **Shri Kripa Ram and Others vs. Smt. Maina, 2002(2) Shim.L.C. 213**. In that case, this Court relying upon the decision of the Privy Council in **Sennimalai Goundan and another vs. Sellappa Goundan and others**, AIR 1929 Privy Council 81, interpreting the provisions of Section 60(2) of the Registration Act read with

Section 115 of the Evidence Act held that where a person admits execution of an instrument before the Registrar after the document has been explained to him, he cannot subsequently plead that he was ignorant to the nature of the transaction. The decision relied upon also follows the judgment of this Court in **Kanwarani Madna Vati and another vs. Raghunath Singh and others, AIR 1976 HP 41**. Prima facie, this argument seems attractive but on consideration of the facts on record, this submission cannot be accepted. The evidence on record and proved facts are consistent only with one conclusion and that is that the plaintiff has been duped. The cumulative effect of the established facts, namely, illiteracy of the plaintiff, non-payment of the consideration money and material contradictions in the statements of the witnesses of the defendant are all sufficient to rebut the presumption so invoked by the defendant. No sale consideration was either paid by the defendant or received by him before the Registrar. In the decision relied upon by the learned counsel appearing for the appellant, the Court had held that the endorsement was clear not only regarding the presentation of the deed before the Registrar but the fact that payment of the consideration had been admitted and that the document had in fact been read over and explained to the executant. Moreover, the presumption under Section 60 *ibid* is not irrefutable. Old age, illiteracy and backwardness, were facts which placed a special cloak of protection around the plaintiff. There is nothing on the record to suggest or show that the plaintiff had in fact understood the nature of the transaction or that he was *ad-idem* with what he was transferring. The conduct of the plaintiff revoking the transaction *vide ExPW-3/A* within a period of five days and in the absence of evidence that during this time he had been prevailed upon by any other person for extraneous consideration to revoke the transaction, the findings of both the Courts below that in-fact no consideration had passed, were all factors which would render the presumption attached to *Ex.DA* as having been negated. All these facts were consistent with only one conclusion that is, that the mind of the plaintiff was not *ad-idem* with the purported transaction.”

24. Therefore, after taking into consideration the evidence led by the parties, I find that the plaintiff /respondent has been successfully in rebutting the presumption as attached to the document Ex.DW-2/A in terms of the provisions of Section 60 (2) of the Registration Act.

25. Now, I proceed to deal with the contention of the appellant that the plaintiff has failed to prove the fraud and misrepresentation. The evidence of the parties has already been discussed in detail, therefore, it would be relevant to make mention of the pleadings regarding fraud and misrepresentation. The following averments are contended in paras 2 and 3 of the plaint:

*"2. That the plaintiff on 10<sup>th</sup> Maghar (Maghsheer) 2049 visited as a guest to the house of defendant, as the defendant is her real brother. There during night hours she fell ill and was not keeping good health, on pretext of treatment and admission to hospital, the defendant brought the plaintiff to Kullu. The defendant with a view to grab the property of the plaintiff took her to different places and buildings in Kullu town, got some papers thumb impressed but was not admitted in hospital and was brought back to village (in his house) and told that admission is not advised. The defendant gave some medicine tablets to the plaintiff and told that take the same. Medicine tablets are with her. The papers were kept by the defendant in his custody. The plaintiff during her life time never came to Kullu prior to the aforesaid date.*

*3. That in the month of September, 1994 (Asoj) the plaintiff requested the defendant to partition the land according to the family arrangement, the defendant then openly said that the plaintiff is no more now the owner of the suit land, then the plaintiff collected the revenue record and enquired about the matter, thereafter she came to know the fraud and deception played on her by the defendant. The defendant has prepared release deed in his favour by playing fraud and deception on the plaintiff, the aforesaid alleged release deed is forged and fictitious, the plaintiff never executed the same, hence the same be declared null and void, ab-initio and illegal. And the mutation Nos. 4159 and 1137 of Phaties Shamshi and Bhumtir respectively attested on the basis of aforesaid alleged release deed*

are also null and void and the plaintiff is not bound by the same and the same be declared so.”

26. What is fraud has been dealt with in detail by this Court in **Smt. Kala Wati's** case (supra), wherein it has been held :

“13. Section 17 of the Indian Contract Act, 1872, (hereinafter referred to as the `Act') deals with fraud defining it to mean inter alia the suggestion of a fact which is not true by a person who does not believe it to be true, active concealment of a fact by a person having knowledge or belief of the fact.

In **Krishna Mohan Kul alias Nani Charan Kul and another vs. Pratima Maly and others, AIR 2003, SC 4251**, the Supreme Court while considering the provisions of Section 16 supra held:-

“13. In judging of the validity of transactions between persons standing in a confidential relation to each other, it is very material to see whether the person conferring a benefit on the other had competent and independent advice. The age or capacity of the person conferring the benefit and the nature of the benefit are of very great importance in such cases. It is always obligatory for the donor/beneficiary under a document to prove due execution of the document in accordance with law, even de hors the reasonableness or otherwise of the transaction, to avail of the benefit or claim rights under the document irrespective of the fact whether such party is the defendant or plaintiff before Court.

14. It is now well established that a Court of Equity, when a person obtains any benefit from another imposes upon the grantee the burden, if he wishes to maintain the contract or gift, of proving that in fact he exerted no influence for the purpose of obtaining it. The proposition is very clearly stated in Ashburner's principles of Equity, 2nd Ed. , p. 229. thus:

"when the relation between the donor and donee at or shortly before the execution of the gift has been such as to raise a presumption that the donee had influence over the donor, the Court sets aside the gift unless the donee can prove that the gifts was the result of a free exercise of the donor's will. "

15. The corollary to that principle is contained in Clause (3) of Section 16 of the Indian contract Act, 1872 (in short 'contract Act').

16. At this juncture, a classic proposition of law by the Privy Council needs to be noted. In *Mst. Farid-Un-Nisa v. Munshi Mukhtar ahmad and Anr.* (AIR 1925 P. C. 204) it was observed as follows:

"it is, therefore, manifest that the rule evolved for the protection of pardahnashin ladies not be confused with other doctrines, such as fraud, duress and actual undue influence, which apply to all persons whether they be pardahnashin ladies or not".

17. The logic is equally applicable to an old, illiterate, ailing person who is unable to comprehend the nature of the document or the contents thereof. It should be established that there was not mere physical act of the executant involved, but the mental act. Observations of this Court, though in the context of pardahnashin lady in *Mst. Kharbuja Kuer v. Jang Bahadur Rai and Ors.* (AIR 1963 SC 1203) are logically applicable to the case of the old, invalid, infirm (physically and mentally) and illiterate persons".

14. To similar effect is the judgment of the Supreme Court in *State of Andhra Pradesh and another vs. T.Suryachandra Rao*, AIR 2005 SC 3110. The Court held:-

"8. By "fraud" is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from the ill will towards the other is immaterial. The expression "fraud" involves two elements, deceit and injury to the person deceived. Injury is something other than economic loss, that is, deprivation of property, whether movable or immovable or of money and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver, will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied. (See *Dr. Vimla v. Delhi Administration and Indian Bank v. Satyam Fibres (India) Pvt. Ltd.* ).

9. A "fraud" is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is

a deception in order to gain by another's loss. It is a cheating intended to get an advantage. (See *S. P. Chengalvaraya Naidu v. Jagannath* ).

10. "Fraud" as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including *resjudicata*. (See *Ram Chandra Singh v. Savitri Devi and Ors.* )".

"11. .... In a leading English case i.e. *Derry and Ors. v. Peek* (1886-90) All ER 1 what constitutes "fraud" was described thus: (All ER p. 22 BC) "fraud" is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false". But "fraud" in public law is not the same as "fraud" in private law. Nor can the ingredients, which establish "fraud" in commercial transaction, be of assistance in determining fraud in Administrative Law. It has been aptly observed by Lord Bridge in *Khawaja v. Secretary of State for Home deptt.* , that it is dangerous to introduce maxims of common law as to effect of fraud while determining fraud in relation of statutory law. "fraud" in relation to statute must be a colourable transaction to evade the provisions of a statute. "if a statute has been passed for some one particular

*purpose, a court of law will not countenance any attempt which may be made to extend the operation of the Act to something else which is quite foreign to its object and beyond its scope. Present day concept of fraud on statute has veered round abuse of power or mala fide exercise of power. It may arise due to overstepping the limits of power or defeating the provision of statute by adopting subterfuge or the power may be exercised for extraneous or irrelevant considerations. The colour of fraud in public law or administration law, as it is developing, is assuming different shades. It arises from a deception committed by disclosure of incorrect facts knowingly and deliberately to invoke exercise of power and procure an order from an authority or tribunal. It must result in exercise of jurisdiction which otherwise would not have been exercised. The misrepresentation must be in relation to the conditions provided in a section on existence or non-existence of which the power can be exercised. But non-disclosure of a fact not required by a statute to be disclosed may not amount to fraud. Even in commercial transactions non-disclosure of every fact does not vitiate the agreement. "in a contract every person must look for himself and ensures that he acquires the information necessary to avoid bad bargain. In public law the duty is not to deceive. (See Shrisht Dhawan (Smt.) v.M/s.Shaw Brothers, 1992(1) SCC 534 )."*

12. ....

"13. This aspect of the matter has been considered recently by this Court in *Roshan deen v. Preeti Lal Ram Preeti Yadav v. U. P. Board of High School and Intermediate Education, Ram Chandra Singh's case (supra)* and *Ashok Leyland Ltd. v. State of T.N. and Another [2004(3) SCC 1]*.

14. Suppression of a material document would also amount to a fraud on the court, (see *Gowrishankar v. Joshi Amba shankar Family Trust and S. P. Chengalvaraya Naidu's case (supra)*).

15. "Fraud" is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. Although negligence is not fraud but it can be evidence on fraud; as observed in *Ram Preeti yadav's case (supra)*".

27. The evidence led by the parties to the lis has already been discussed in detail. In the entirety of the facts and circumstances, this Court is of the firm view that the defendant/appellant played fraud upon the original plaintiff Smt. Baldassi and got executed the release deed Ex.DW-2/A. The learned lower Appellate court has given a detailed judgment wherein not only the pleadings but even the evidence and law applicable to the given facts have been discussed in detail, calling for no interference from this Court. Accordingly, the substantial questions of law No. 1 and 3 are answered against the appellant/defendant.

28. Consequently, there is no merit in the appeal and the same is ordered to be dismissed with costs throughout.

**March 29, 2014**  
**(GR)**

**( Tarlok Singh Chauhan )**  
**Judge.**