



NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

FA No. 139 of 2004

Smt.Anjana Khakha W/o Vijay Khakha Aged About 35 Years Cast - Uraon,
Resident Of Kunkuri Police Station And Tahsil Kunkuri District - Jashpur

... Appellant

versus

1- Saihin Xalxo (Died and Deleted) Through Lrs. Nil

1.1 - (A) Lalita Xalxo Wd/o Shri Saihun Xalxo Aged About 50 Years R/o Village Karamdeeh, Tahsil And District - Simdega, Jharkhand

1.2 - (B) Ashin Xalxo D/o Shri Saihun Xalxo Aged About 27 Years R/o Village Karamdeeh Tahsil And District -Simdega, Jharkhand

1.3 - (C) Anjan Xalxo S/o Shri Saihun Xalxo Aged About 24 Years R/o Village Karamdeeh Tahsil And District -Simdega, Jharkhand

1.4 - (D) Aadam Xalxo S/o Shri Saihun Xalxo Aged About 22 Years R/o Village Karamdeeh Tahsil And District -Simdega, Jharkhand

2 - Prabhudas Xalxo S/o Powel Xalxo Aged About 40 Years Caste Uraon, Resident Of Village Karamdeeh Tahsil Simdega Jharkhand

3 - Deepshikha Xaxa Aged About 44 Years D/o Peska Xaxa (Adopted Daughter Of Manohar Xalxo), W/o Akash Xaxo, R/o - Bethesada Compound, G.E.L. Graveyard, G.E.L. Church, Ranchi, G.P.O. Jharkhand, 834001. Presently Residing At Village - Kunkuri (Opposite Girls School - Tapkra Road) Tahsil And P.S. - Kunkuri, District - Jashpur, C.G.

... Respondent(s)

For Appellant	: Mr. Manoj Paranjpe, Senior Advocate assisted by Ms. Shivangi Agrawal & Ms. Pranoti Das, Advocates
For Respondent(s) No.3	: Mr. Hemant Gupta, Advocate
Date of Hearing	: 04.12.2025
Date of Judgment	: 07.01.2026

Hon'ble Shri Justice Rakesh Mohan Pandey

C A V Judgment

1. This appeal has been preferred by the defendant/appellant assailing the validity and propriety of the judgment and decree dated 06.05.2004 passed by the IInd Additional District Judge (F.T.C.) in Civil Suit No. 5A of 2003, whereby the suit filed by the plaintiffs was decreed.
2. The original plaintiff, namely Manohar Xalxo filed a suit against the sole defendant to declare the sale deed dated 25.05.2000 as null and void on the ground that the sale deed was executed in favour of the defendant, as a compromise was made that the defendant had agreed to take care of the original plaintiff till his death. The suit property is the land bearing Survey Nos. 476/13 and 476/14, and the house situated over it. The property is situated at Village Kunkuri, P.H.No.7, District Jashpur.
3. The original plaintiff was issue-less, and the defendant was brought up in his custody, and her marriage was performed by the original plaintiff. It is pleaded that the defendant allured the original plaintiff and therefore the sale deed was executed. The plaintiff pleaded that he remained in possession of the property till the finalization of the suit. Allegations of fraud were also made. The plaintiff pleaded that the witnesses to the sale deed were Dilip Jain, son of Jagmohan Jain, and Philmon Khakha. Dilip Jain was a tenant of the plaintiff and he wanted

to purchase the suit house and at his instance, the defendant purchased the property.

4. The defendant filed a written statement and denied the averments made in the plaint. It was pleaded that the registered sale deed was executed on 25.05.2000 in the presence of witnesses after payment of the consideration of ₹80,000. She pleaded that possession was handed over to her, and after the death of the original plaintiff, he was no longer the owner of the property. She further pleaded that she was employed and used to take care of the original plaintiff and his wife, and used to visit them frequently. It was also stated that the original plaintiff was issue-less and a registered sale deed was executed in favour of the defendant in the presence of two witnesses.
5. The trial court framed issues, parties adduced evidence, and thereafter the judgment and decree were passed.
6. The original plaintiff Manohar Xalxo died on 15.01.2002, and one Paval Xalxo moved an application for his impleadment as the plaintiff, being the legal representative of the original plaintiff. He pleaded that the late Manohar Xalxo had adopted one Deepshikha on 20.06.1982, and an adoption deed was executed on 31.03.1997. During the pendency of the suit, Paval Xalxo also died. Saihun Xalxo and Prabhudas Xalxo were impleaded as the legal representatives of Paval Xalxo.
7. An application was moved by Deepshikha under Order I Rule 10 CPC stating that she was adopted by late Manohar Xalxo on 20.06.1982 and a registered adoption deed was executed on 21.03.1997. It was also pleaded that she was staying at her matrimonial home; therefore, she could not move the application earlier for impleadment. It was pleaded that she be impleaded as a defendant by the appellant herein in Civil Suit No. 5A/2003 as a legal representative of the late Manohar Xalxo. The said application was allowed vide order dated 19.11.2025.

8. Despite the service of notice, there is no representation on behalf of the legal representatives of Saihun Xalxo and Prabhudas Xalxo. This appeal is being contested by the newly added respondent, Deepshikha.
9. The plaintiff exhibited:-
 - Exhibit P-1:** certified copy of the sale deed dated 25.05.2000;
 - Exhibits P-2 & P-3:** maps of the suit property; &
 - Exhibits P-4, P-5 & P-6:** revenue records of 2000–2002
10. No documents were produced by the defendants.
11. The plaintiff examined: Saihun Xalxo (PW-1), Jyoti Prakash Minz (PW-2), Jeevan Das (PW-3) and Elias Ekka (PW-4); whereas the defendant examined herself as DW-1, Philmon Khakha as DW-2, and Dilip Jain as DW-3.
12. The learned trial Court held that the defendant was not residing in the suit house on rent; rather, she was residing along with the original plaintiff Manohar Xalxo. It was further held that the defendant failed to prove the fact that she was staying separately from Manohar Xalxo, since she was about 13 years old; therefore, the trial court held that the original plaintiff managed the expenses of the defendant. It was also held that the expenses of the defendant's marriage were borne by the plaintiff.
13. The trial court held that there was no financial need for the original plaintiff to execute the alleged sale deed dated 25.05.2000 in favour of the defendant. The defendant failed to prove possession over the property. The valuation of the suit property is mentioned as ₹2,14,000, and there was no reason for the original plaintiff to sell it for only ₹80,000. The defendant failed to establish that the consideration amount of ₹80,000 was paid by her, and no document was produced to prove this fact.

14. Mr. Manoj Paranjpe, learned Senior Advocate appearing for defendant/appellant, would argue that the trial court has decreed the suit filed by the plaintiff on the ground that the sale deed dated 25.05.2000 was a sham sale deed executed on account of love and affection by the original plaintiff in favour of the defendant, and the sale consideration was never passed to the original plaintiff. He would contend that if the sale consideration was not passed to the original plaintiff, the plaintiff should have filed a suit for recovery. He would further contend that intention is to be gathered from the recital of the sale deed to conclude whether the sale deed was an outright sale or a sham sale.
15. It is further argued that attesting witnesses, namely Dilip Jain and Philmon Khakha, have proved the due execution of the sale deed; therefore, the findings recorded by the learned trial court regarding the execution of the sale deed are not sustainable. In this regard, reliance has been placed upon the judgment passed by the High Court of Chhattisgarh in ***Mohammad Ashif Memon v. Noor Begum & Anr., 2024 SCC OnLine CHH 4863.***
16. Mr. Paranjpe would also argue that a document affecting sale must contain a stipulation to the effect that the sale deed was executed out of love and affection, with an obligation that the defendant would take care of the original plaintiff till his death; otherwise, such a sale deed would become inoperative. He would contend that in the absence of any such recital, it cannot be presumed that the sale deed was a sham sale. He has placed reliance on the judgment passed in **Jaswant Singh (Dead) through Lrs v. Tijiya Bai (Dead) through Lrs** passed in **Second Appeal No. 350/2003.**
17. He would also contend that the registered sale deed executed by the original plaintiff in favour of the defendant is presumed to be genuine

if the same is registered. He would contend that the burden is on the plaintiff to prove the contrary. In this regard, he has placed reliance on the matter of ***Rattan Singh and others v. Nirmal Gill and others, (2021) 15 SCC 300.*** He would also submit that the trial court wrongly shifted the burden of proof on the defendant. He would contend that the plaintiff(s) cannot take the benefit of the weakness of the defendant. It is also argued that even if the defendant enjoyed the acting confidence of the original plaintiff, thereafter, the sale deed was executed in her favour; in such a situation, the plaintiff failed to prove the misuse of trust. The learned trial Court was under an obligation to read the contents of the sale deed in its entirety, as the intention of the parties can be gathered from the language used therein. In this regard, he has placed reliance on the matter of ***Prakash (dead) by Lrs v. G. Aradhya& Ors., 2023 LiveLaw (SC) 685.***

18. On the other hand, Mr. Hemant Gupta, learned counsel for the plaintiff, would oppose the submissions made by Mr. Paranjpe and argue that the sale deed was executed by the original plaintiff in favour of the defendant out of love and affection on the condition that she would maintain him till his death. He submitted that the defendant failed to honour her promise and therefore the suit was filed by the original plaintiff seeking a declaration that the sale deed dated 25.05.2000 was void.
19. He argued that the defendant could not adduce evidence to establish that she had sufficient funds to purchase the property. An application under Order XI Rule 12 read with Section 151 CPC was moved by the plaintiff to direct the defendant to produce documents to establish the withdrawal of ₹80,000 from her bank account, but she failed to do so. It is argued that since the defendant failed to prove the payment of the sale consideration, the sale deed is null and void. It is also submitted that the plaintiff exhibited only the certified copy of the sale deed as

Exhibit P-1 and did not possess the original sale deed; if it was executed in favour of the defendant, she should have been in possession of the original sale deed. He would further contend that the trial court recorded categorical findings that the sale deed was executed out of love and affection without payment of the consideration.

20. Mr. Gupta submitted that Deepshikha is the adopted daughter of the late Manohar Xalxo; therefore, she has the right to the property. He would also contend that Dilip and Philmon are friends and relatives, respectively, of the defendant, and thus, they are interested witnesses. Reliance is placed on the matter of ***Kewal Krishan v. Rajesh Kumar and other, 2022 AIR SC 564***, wherein the Hon'ble Supreme Court held that if a sale deed in respect of a memorable property is executed without payment of price and if it does not provide for the payment of price at a future, it is not a sale at all in the eyes of law. It is of no legal effect; therefore, such a sale will be void. It will not affect the transfer of the immovable property.
21. Reliance is also placed on ***Shanti Devi v. Jagan Devi, 2025 AIR SC 4342***, and it is contended that in the absence of sale consideration, the sale deed is void.
22. I have heard learned counsel for the parties and perused the record with utmost circumspection.
23. The question for determination is whether the sale deed executed by the original plaintiff, late Manohar Lal Xalxo was an outright sale deed, or whether the sale consideration was not tendered?
24. The original plaintiff in the plaint pleaded that he was the owner of the suit property; the defendant was like his daughter and took care of him; he executed a registered sale deed on 25.05.2000 in her favour; and an assurance was given by the defendant that she would not mutate her

name in the revenue records during his lifetime. It was pleaded that Dilip Jain instigated the defendant and extended threats on 24.02.2001. The plaintiff in the entire plaint did not plead that the sale consideration was not tendered. In para-6 of the plaint, he admitted that the sale deed was registered on 25.05.2000, but stated that the sale consideration was not tendered. In para-10, he pleaded that Dilip Jain extended a threat to him on 24.10.2001, which is the date of execution of the sale deed.

25. Saihul Xalxo (PW/1) admitted the fact that Manohar Xalxo died, issue less. He further admitted that a registered sale deed was executed in favour of the defendant on 25.05.2000. In cross-examination, he admitted that the suit property was self-acquired property of Manohar Xalxo. He admitted that the defendant was employed. PW-2 and PW-4 stated that the sale deed was executed out of love and affection, but had no personal knowledge of payment or non-payment of the consideration.
26. Jyoti Prakash Minz (PW/2) stated that there was an assurance on the part of the defendant to maintain and take care of the original plaintiff, and thereafter, a registered sale deed was executed. In cross-examination, it has been admitted that Dilip Jain has constructed a separate house.
27. Jeevan Das (PW-3), the document writer, stated that according to the original plaintiff, the sale deed was executed on account of love and affection, but Exhibit P-1 does not bear his signature as a deed writer.
28. DW-1 (defendant) stated that ₹80,000 was paid to the original plaintiff and possession was handed over. In cross-examination, she stated that she was staying in the plaintiff's house on rent and admitted that Manohar was shown as her guardian in the service records. She stated

that the consideration was withdrawn from Punjab National Bank, but no document was produced.

29. DW-3 Dilip stated that he was present at the time of the transaction of ₹80,000 to the plaintiff, and the sale deed was executed in his presence. He stated that late Manohar Xalxo was an old aged person; therefore, he executed the sale deed on 25.05.2000 for a sale consideration of Rs.80,000/-.
30. Philmon Xaxa stated that a registered sale deed was executed by the original plaintiff in favour of the defendant. Manohar Xalxo was issueless, and the defendant is his daughter-in-law. He further stated that the sale consideration was passed in his presence.
31. Exhibit P-1 reflects that ₹80,000 was paid, as recited in Clause 2. Dilip Jain and Philmon were witnesses to the sale deed, and they proved the due execution of the sale deed; the original plaintiff did not dispute the execution of the sale deed.
32. The Hon'ble Supreme Court, in the matter of ***Rattan Singh (supra)***, held that a registered document carries a presumption of genuineness. Even if the burden had shifted to the defendant, the same stood discharged through the testimony of the attesting witnesses. The relevant paragraph No. 33 is reproduced herein below:-

“33. To appreciate the findings arrived at by the Courts below, we must first see on whom the onus of proof lies. The record reveals that the disputed documents are registered. We are, therefore, guided by the settled legal principle that a document is presumed to be genuine if the same is registered, as held by this Court in Prem Singh and Ors. v. Birbal and Ors. (2006) 5 SCC 353. The relevant portion of the said decision reads as below:

“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 1 has not been able to rebut the said presumption." (emphasis supplied) In view thereof, in the present cases, the initial onus was on the plaintiff, who had challenged the stated registered document."

33. With regard to proving the execution of the sale deed, the initial burden to prove would lie upon the plaintiff, as it was a case where the original plaintiff executed sale deed on account of love and affection.

34. If, for the sake of argument, the burden was shifted upon the defendant, the same was duly discharged by examining witnesses to the sale deed.

35. Para- 41 of *Rattan Singh (supra)*, is reproduced as under:-

"**41.** The trial Court had justly placed the initial burden of proof upon the plaintiff as it was her case that the subject documents were forged or product of fraud and moreso because the documents bore her signature. The first appellate Court did not elaborate on that aspect. Even assuming that the burden had shifted upon the defendants, the witness identifying signatures of the dead attesting witness was examined by the defendants. Therefore, the documents stood proved and the burden was duly discharged by the defendants."

36. Mr. Gupta tried to establish the fact that consideration was not tendered by the defendant to the original plaintiff, but if that were so, the plaintiff should have filed a suit for recovery. Further, in the registered sale deed, there is no recital that it was executed out of love and affection or without payment of the sale consideration.

37. In the absence of such a recital, it cannot be held that it was not an outright sale.

38. In the matter of ***Mohammad Ashif Memon (supra)***, the Division Bench of the High Court of Chhattisgarh, in para 5, 6 & 16, held as under:-

"5. (i) Learned counsel appearing for the appellant/defendant would submit that the evidence of the parties would show that apart from the sale consideration, which is shown in the sale deed, considerable amount was paid in cash by the seller to the purchaser and in respect of the sale deed the dispute arose with respect to certain demarcation as such the cheques were not honoured. However, after filing of the suit he was ready and willing to pay the entire amount. Learned counsel would place reliance upon the decision rendered by the Supreme Court in the matter of *Dahiben v Arvindbhai Kalyanji Bhanusali (Gajra)*(2020) 7 SCC 366 and *Kewal Kishan v Rajesh Kumar* 2021 SCC OnLine SC 1097 to submit that sale once has been made and possession delivered, the intention of the parties would be governed by the provisions of Section 54 of the Transfer of Property Act, 1882 (for short 'the TP Act'). Therefore, the only course would be left out to ask for the amount.

(ii) Learned counsel would also submit that in this case, the defendant-purchaser has categorically admitted that he is ready and willing to pay the amount and, as such, the sale deed cannot be declared as a nullity. Referring to the statement of DW-1 Mohammad Arif Memon, learned counsel would submit that categorical statement was made that during levelling of land hefty amount was incurred by the purchaser and after that demarcation would be carried out and the amount would be paid. On those conditions the sale deed was executed. He would submit that the said statement remained unrebutted. Learned counsel would refer to the suggestion made by the plaintiff to the defendant wherein at para 30 it was suggested that possession has been handed over would go to show that the registry has been completed. Learned counsel would submit that the trial Court has completely misdirected itself to interpret Section 54 of the TP Act to hold that the sale would be void as the cheques, which were paid for payment got bounced. Therefore, the impugned judgment and decree is liable to be set aside.

6. (A) Learned counsel appearing for the respondent No.1/plaintiff, ex adverso, would submit that albeit the sale deed was registered by Ex.P/1 the recital of the same engrafts that in case the cheques are dishonoured the sale deed would be cancelled, therefore, if the cheques which were tendered dishonoured which automatically would cancel the sale deed as per the intention of the parties. Learned counsel would place reliance upon the decision rendered by the Supreme Court in the matter of *Kaliaperumal v Rajgopal and Another* (2009) 4 SCC 193 to submit that the recital in the sale deed would be relevant to know the nature of the transaction. He would further submit that the learned trial Court has rightly held that as per the document Ex.D/11C the possession of the land is with the seller, therefore, the sale deed though was executed cannot be given effect.

(B) Learned counsel would also place reliance upon the decision rendered by the Supreme Court in the matter of *Vidyadhar v Manikrao and Another* (1999) 3 SCC 573 to submit that when the possession was not handed over the sale deed cannot be said to have been executed. Referring to Ex.D/2 & Ex.D/6 learned counsel would submit that when the notice was issued to the purchaser to place the documents for expenses incurred he could not file the same. It would go show that nothing was done by the purchaser and false statement was made. He would submit that the statement of purchaser in other proceeding would show that he was apprehensive of the fact that part of land would be acquired as such he did not deliberately pay the amount of sale consideration and it was after exchange of notice the seller filed the civil suit for cancellation of the sale deed. Learned counsel would submit that the impugned judgment and decree is well merited, which do not call for any interference of this Court.

16. The decision rendered by the Supreme Court in the matter of *Vidyadhar* (supra), relied by the plaintiff, was considered by the Supreme Court in the matter of *Dahiben* (supra) wherein it was held that the intention is to be gathered from the recitals of the sale deed, the conduct of the parties, and the evidence on record. Para 29.8 of the aforesaid judgment is relevant and the same is quoted below :

29.8 In *Vidhyadhar v. Manikrao* [*Vidhyadhar v. Manikrao*, this Court held that the words "price

paid or promised or part-paid and part-promised" indicates that actual payment of the whole of the price at the time of the execution of the sale deed is not a sine qua non for completion of the sale. Even if the whole of the price is not paid, but the document is executed, and thereafter registered, the sale would be complete, and the title would pass on to the transferee under the transaction. The non-payment of a part of the sale price would not affect the validity of the sale. Once the title in the property has already passed, even if the balance sale consideration is not paid, the sale could not be invalidated on this ground. In order to constitute a "sale", the parties must intend to transfer the ownership of the property, on the agreement to pay the price either in praesenti, or in future. The intention is to be gathered from the recitals of the sale deed, the conduct of the parties, and the evidence on record.

(emphasis added)

Thus, the contention of the plaintiff that only recitals of payment must be considered for gathering interest of parties is not correct."

39. In the matter of *Shanti Devi (supra)*, the Hon'ble Supreme Court held that since the sale deeds were executed without consideration, those sale deeds did not affect, in any manner, the share of the appellant therein. In the said case, the attesting witnesses to the execution of the sale deeds were not examined. There was no witness to substantiate the fact that there was a part payment of the sale consideration at the time of execution of the sale deeds. The relevant paragraph No. 38 is reproduced herein below:-

"38.Concurrent findings of both the First Appellate Court and the High Court indicated that the husband of the defendant i.e., one Bagdawat, who had allegedly given the remaining sale consideration of Rs.6,000/- during the time of execution of the sale deed, had not stepped into the witness box. Furthermore, one of the attesting

witnesses to the execution of the sale deed i.e., the Sarpanch had also died before his deposition could be recorded. One Budhu, who was the second attesting witness, was the brother of the defendant and both the Courts had doubted his testimony as being partial to the defendant. All in all, there was no witness who could substantiate the case of the defendant that there was part-payment of the sale consideration, i.e.,

Rs. 6,000/- during the time of execution of the sale deed. Furthermore, no evidence was adduced by the defendant to prove that even the initial amount of Rs. 9,000/- which was purportedly paid before the execution of the sale deed was actually received by the plaintiff. Therefore, the averment of the plaintiff in the plaint, that she had not received the sale consideration, had not been otherwise proven as false. In such circumstances as well, i.e., in the absence of the sale consideration being tendered, the sale deed would be void and the plaintiff would not be required to seek its cancellation. Therefore Article 59 of the Limitation Act, 1963 could not be said to be applicable to the present facts.”

40. In the present case, the original plaintiff has not pleaded that the sale consideration was not tendered to him. This issue has been raised for the first time before this Court, and any submission beyond the pleadings cannot be entertained. Even evidence beyond the pleadings is not admissible; thus, the judgment cited by Mr. Gupta does not help the case of the plaintiff in any manner.

41. It is a well-settled principle of law that if a sale deed does not contain a stipulation converting the sale into a mortgage or conditional sale, no contrary interpretation can be imposed.

42. The Coordinate Bench in the matter of *Jaswant Singh (supra)*, in para- 10 & 16 held as under:-

“10. The effect of this proviso is that no document of sale can be treated as mortgage unless the document effecting the sale itself contains a recital to that effect. The whole object is to exclude or shut out the oral evidence to be adduced in the case when such a condition is contained in a separate document. Thus, if the document effecting a sale does not contain a stipulation regarding the conversion of the sale into a mortgage and such a stipulation is contained in a separate document, in such a case, it is not at all open in law to enquire into the nature of the transaction and to take extrinsic evidence for holding that the document which purports to be an absolute sale is in reality, a mortgage.

16. Reverting to the facts of the present case in light of the proviso to Section 58(c) of the Transfer of Property Act, 1882 and in light of the principles rendered by Their Lordships of the Supreme Court in *Chunchun Jha* (supra) followed in *Srinivasaiah* (supra), examining Ex.D-1, it is quite vivid that the document in question purports to be an absolute sale, as it does not contain any stipulation for treating the sale as mortgage. The agreement of reconveyance is neither embodied in a separate document; it is said to be agreed orally and it is not recorded in the document as such. In absence of embodiment of such a clause in Ex.D-1, the transaction cannot be regarded as mortgage, as no oral evidence is admissible to contradict Ex.D-1, which is an outright sale transferring title by the plaintiffs in favour of defendant No.1. Therefore, the transaction in question, in absence of embodiment as contained in the proviso to Section 58(c) of the Transfer of Property Act, 1882, cannot be regarded as mortgage and it is held to be an outright sale. Both the Courts below are absolutely unjustified in holding the sale deed dated 31-12-1969 (Ex.D-1) as mortgage in absence of incorporation in the said document Ex.D-1 that it is a mortgage as provided in the said proviso. As such, the finding recorded by the two Courts below in this regard is contrary to facts and law available on record.”

43. The Hon'ble Supreme Court, in the matter of *Prakash (dead) by LRs v. G. Aradhya & Ors.*, reported in *2023 LiveLaw (SC) 685*, held that for proper appreciation of a document, its contents must be read in its entirety, and its true nature is to be gathered from the language used therein. The relevant paragraph No. 25 is reproduced herein below:—

"25. Similar argument, where two separate documents were executed, came up for consideration before this Court in Bishwanath Prasad Singh's case (supra). One was the Sale Deed and the second was the agreement for sale. Both were executed on the same date. It was opined therein that to appreciate a document its contents are to be read in entirety and the intention of the parties is to be gathered from the language used therein. Para 16 of the aforesaid judgment is referred to for ready reference:

"16. A deed as is well known must be construed having regard to the language used therein. We have noticed hereinbefore that by reason of the said deed of sale, the right, title and interest of the respondents herein was conveyed absolutely in favour of the appellant. The sale deed does not recite any other transaction of advance of any sum by the appellant to the respondents which was entered into by and between the parties. In fact, the recitals made in the sale deed categorically show that the respondents expressed their intention to convey the property to the appellant herein as they had incurred debts by taking loans from various other creditors."

25.1. Further, in the aforesaid judgment, this Court while interpreting the terms of the agreement executed along with the Sale Deed and opined that the same cannot be treated to be a mortgage as the expression used therein were 'vendor', 'vendee', 'sold' and 'consideration'. Fixed period was granted for execution of the Sale Deed.

25.2. The scope of Section 58(c) of the 1882 Act⁴ was considered in detail in paras 27 to 33 thereof which are extracted below:

"27. A bare perusal of the said provision clearly shows that a mortgage by conditional sale must

be evidenced by one document whereas a sale with a condition of retransfer may be evidenced by more than one document. A sale with a condition of retransfer, is not mortgage. It is not a partial transfer. By reason of such a transfer all rights have been transferred reserving only a personal right to the purchaser (sic seller), and such a personal right would be lost, unless the same is exercised within the stipulated time.”

44. In the matter of *Kewal Krishan (supra)*, cited by Mr. Gupta, it has been held that no evidence was adduced to establish the existence of any source of income to make payment of the consideration mentioned in the sale deed and in the absence of any such source of income, the sale deed would be void. The relevant paragraphs Nos. 14 and 15 are reproduced herein below:—

“14. Admittedly, there is no evidence adduced on record by Sudarshan Kumar that his minor sons had any source of income at the relevant time and that they paid him consideration as mentioned in the sale deed. Similarly, no evidence was adduced to show that Sudarshan Kumar’s wife had any source of income and that she paid consideration mentioned in the sale deed. An issue was specifically framed by the Trial Court on the validity of the sale deeds. There is a specific finding recorded by the District Court that there was no evidence adduced to show that Sudarshan Kumar’s wife and minor children paid consideration as shown in the sale deeds. In fact, before the District Court, it was pleaded that Sudarshan Kumar’s wife had brought some money from her parents. The District Court in paragraph 11 of the judgment held that no evidence was adduced to prove the said contention. Therefore, there is a categorical finding recorded in the same paragraph by the District Court that Sudarshan Kumar, by taking advantage of the power of attorney, transferred the suit lands to his own minor sons and his wife without any consideration. The High Court has not disturbed the finding recorded by the District Court regarding

the failure of the respondents to adduce evidence regarding the payment of consideration under the sale deeds dated 10th April 1981. The High Court in paragraph 29 merely observed that the sale consideration of Rs.5,500/- and Rs.6,875/- was not exorbitant and was not out of reach of Sudarshan Kumar's sons and wife. Perhaps, the High Court has ignored that it was considering a case of sale deeds of the year 1981 and that the purchasers under one of two sale deeds were minor sons of Sudarshan Kumar and it was not even pleaded that they had any source of income. The same is the case with the sale deed executed by Sudarshan Kumar in favour of his wife. Thus, undisputed factual position is that the respondents failed to adduce any evidence to prove that the minor sons had any source of income and that they had paid the consideration payable under the sale deed. They did not adduce any evidence to show that Sudarshan Kumar's wife was earning anything and that she had actually paid the consideration as mentioned in the sale deed.

15. Section 54 of the Transfer of Property Act, 1882 (for short "the TP Act") reads thus:

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

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

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

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

Contract for sale.—A contract for the sale of immoveable property is a contract that a sale

of such property shall take place on terms settled between the parties.

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

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

45. In the present case, the original plaintiff executed a sale deed in favour of the defendant, and in the said document there is no whisper that consideration was not tendered by the defendant; therefore, the facts of the present case are entirely different from the facts of the cited case. According to pleadings made in the plaint, it is not a case of plaintiff that consideration was not tendered by the defendant.
46. Taking into consideration the above-discussed facts and law, the question for determination is answered in favour of the appellant. Resultantly, the appeal is **allowed**, and the judgment and decree passed by the learned trial court is hereby **set aside**.
47. Decree be drawn accordingly.

Sd/-

Rakesh Mohan Pandey

JUDGE

Nadim