2026:AHC-LKO:80307

A.F.R.
Reserved

HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

SECOND APPEAL No. - 107 of 1994

Sadanand and others

…..Appellant(s)

Versus

Kalu

…..Respondent(s)

Counsel for Appellant(s)	:	D.p.diwedi, Aftab Ahmad
Counsel for Respondent(s)	:	Amit Kumar Singh, Surendra Pratap Singh

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Along with

SECOND APPEAL No. - 108 of 1994

Sadanad and 4 others.

…..Appellant(s)

Versus

Kalu

…..Respondent(s)

Counsel for Appellant(s)	:	D.p.diwedi, Aftab Ahmad
Counsel for Respondent(s)	:	N.k.pandey, Amit Kumar Singh, Surendra Pratap Singh

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Court No. - 16

HON'BLE SYED QAMAR HASAN RIZVI, J.

1. Sri Aftab Ahmad, along with Sri Yusuf Uz Zaman Safwi, learned counsel representing the appellants, Sri Amit Kumar Singh, learned counsel representing the respondent are present.

2. Both the above captioned appeals filed under section 100 of the Code of Civil Procedure 1908, are directed against the common Judgment and Order dated 06.01.1994 passed by the learned Second Additional District Judge, Sultanpur in Civil Appeal No. 143 of 1991 and Civil Appeal No. 142 of 1991, whereby both the civil appeals were dismissed and the common Judgment and Decrees dated 31.05.1991 passed by the learned Fourth Additional Munsif, Sultanpur in Original Suit No. 38 of 1985 (Kalu versus Sadanand and others) and Original Suit No. 90 of 1985 (Sadanand versus Kalu) were affirmed.

3. The Second Appeal No. 107 of 1994 has been preferred against the Judgment passed in Civil Appeal No. 143 of 1991 arising out of Original Suit No. 38 of 1985 whereas the other Second Appeal No. 108 of 1994 has been preferred against the Judgment passed in Civil Appeal No. 142 of 1991 arising out of Original Suit No. 90 of 1985.

4. Since both the aforementioned Second Appeals arising out of the same agreement, are based on the same evidence and involve the same question of law, they are being decided by this common judgment treating the Second Appeal No. 107 of 1994 as the leading case.

5. The original appellant namely Sadanand, and the original respondent namely Kalu, have died during the pendency of the present appeals, and their legal representatives have been duly substituted, therefore, for the sake of convenience, the parties are being referred herein by their original names.

6. The facts in brief shorn of unnecessary details for the disposal of the present appeals are that Kalu was the admitted owner of a plot of *abadi* land measuring 18 x 14 *latha* with four clumps of bamboo, situated in Village Koiripur, Pargana Chanda, Tehsil Kadipur, District Sultanpur (hereinafter referred to as 'the disputed land'). According to Sadanand, an agreement to sell dated 12.09.1980 (hereinafter referred to as 'sale agreement') was executed by Kalu in his favour in respect of the disputed land for a sale consideration of Rs. 4,500/-, out of which Rs. 3,500/- was paid at the time of the agreement and the balance amount of

Rs. 1,000/- was to be paid at the time of execution of the sale-deed. The said sale agreement transcribed by one Ram Adhar Mishra, a deed writer, bears the thumb impression of Kalu and was attested by witnesses, including Ram Murat Singh. It was presented for registration on 13.09.1980 and was registered by Sri Anjani Prasad Srivastava, the then Sub-Registrar, Kadipur through a commission at the house of Achhey Lal, a stamp vendor, the endorsement of the Sub-Registrar recording, inter alia, that the executant was suffering from *filaria*.

7. As per the terms of the aforesaid sale agreement, Kalu was not to transfer the disputed land to anyone else; the sale deed was to be executed within fifteen days of a registered Notice by the purchaser that the balance amount was ready; in case the purchaser failed to get the sale deed executed after such Notice, the agreement was to be treated as canceled and if the vendor failed to execute the sale deed, the purchaser was entitled to get it executed through the Court.

8. It is not in dispute that on 13.03.1981 Kalu executed a registered sale-deed in favour of Sadanand in respect of his old fallen house for a consideration of Rs. 2,600/-.

9. On 15.01.1985 Kalu instituted Original Suit No. 38 of 1985 against Sadanand and his four sons seeking a decree of permanent injunction restraining the defendants from interfering in his possession over the disputed land, cancellation of the agreement dated 12.09.1980 and removal of a manger (*charhi*) and pegs said to have been installed by the defendant during the pendency of the suit. The case of Kalu in the plaint was that he is an illiterate villager and an old patient of *filaria*; that in September 1980 he suffered a severe *filaria attack* and Sadanand a neighbour, in whom he reposed confidence, took him to his house where the son of Sadanand, namely, Dr. Surya Narayan, gave him some medicine; that thereafter he was taken somewhere on the pretext of consulting a doctor, became unconscious after taking medicine given along with water and thumb impressions were obtained from him on papers; that he never negotiated any sale, never purchased stamp from

Achhey Lal, never approached the deed writer or the Registrar and never received any money; that the price mentioned in the agreement is far too low in comparison to the worth of the land which is situated in the town area; and that he came to know about the agreement only in December 1984.

10. The defendants contested the Suit by filing written statement denying the allegations. Their case was that Kalu himself was in need of money and agreed to sell the disputed land; that the agreement was executed by him after hearing and understanding its terms; that Rs. 3,500/- was paid to him; that Sadanand came into possession of the land under the agreement; and that Kalu, who had also sold his house to Sadanand on 13.03.1981, had turned dishonest.

11. On 31.01.1985 Sadanand instituted Original Suit No. 90 of 1985 for specific performance of the agreement, pleading that he is ready and willing to pay the balance of Rs. 1,000/- and get the sale deed executed, that on 19/20.01.1985 Kalu refused to perform the agreement and that he is in possession of the land. In the alternative, he prayed for refund of Rs. 3,500/- with interest. Kalu contested the suit alleging that the agreement was the outcome of conspiracy and fraud and also pleaded that the suit is barred by limitation.

12. Both the suits were consolidated on 05.01.1988 and were tried together. Kalu examined himself as PW-1 and filed the census register entry and a copy of the sale agreement. Sadanand examined himself as DW-1 and examined Bhawani Pher (DW-2), Ram Murat Singh, the attesting witness (DW-3), Ram Adhar Mishra, the scribe (DW-4) and Sri Anjani Prasad Srivastava, the Sub-Registrar who had registered the agreement (DW-5). The original agreement, the original sale deed dated 13.03.1981 and certain other documents were also filed. The Commissioner's report dated 30.10.1986 is also on record.

13. The learned trial court, *vide* common judgment dated 31.05.1991, decreed Original Suit No. 38 of 1985 with costs, canceled the agreement, restrained the defendants from interfering in the possession of Kalu and

directed removal of the manger and pegs, and dismissed Original Suit No. 90 of 1985 with costs. The trial court, after noticing that Kalu had indirectly admitted his thumb impression on the agreement, held that the statements of DW-1, DW-3, DW-4 and DW-5 were contradictory to each other and to the endorsement of the Sub-Registrar on the back of the agreement with regard to the date and place of execution and registration, the place where the money was paid and the manner in which the executant was produced; that the Sub-Registrar had himself recorded that the executant was suffering from *filaria*; that the stamp vendor Achhey Lal was not produced by the defendants; and that DW-1 had admitted in his cross-examination that Kalu had taken tablets on that day. On that basis the trial court held that it was for the defendants to prove that Kalu had no illness and that he had put his thumb impression in a sound state of mind and since the defendants had failed to prove the agreement, it was the outcome of a conspiracy hatched by taking advantage of the helplessness, illness and loneliness of Kalu. The trial court further observed that the case was covered by Section 17 of the Indian Contract Act, 1872 and that if fraud was proved the agreement would be voidable under Section 19 of the Act and, on that reasoning, held the agreement to be liable to be canceled. The findings on ownership and possession, the injunction and the dismissal of the suit for specific performance were all made consequential to the cancellation of the agreement.

14. In Civil Appeal No. 143 of 1991, the learned First Appellate Court affirmed the decree passed in Original Suit No. 38 of 1985 on the grounds that Kalu had executed a registered sale deed for Rs. 2,600/- on 13.03.1981 and, therefore, Sadanand could have paid the balance of Rs. 1,000/- under the agreement which, as such, was fictitious; that the endorsement of the Sub-Registrar showed that the agreement was presented on 13.09.1980 through a commission at the house of the stamp vendor whereas the witnesses stated that everything was done in a single day; that it was a matter of common knowledge that sedative medicines

are given in the treatment of *filaria* and cause thirst and Kalu having asked for water must have been in a state of sedation; that the second attesting witness, Shankar Datt, was not produced; and that Sadanand had never given a registered notice under the agreement and, therefore, no cause of action had arisen in his favour.

15. In Civil Appeal No. 142 of 1991, the same court affirmed the dismissal of Original Suit No. 90 of 1985 on the grounds that the plaint did not contain the averment of readiness and willingness as required under Section 16(c) of the Specific Relief Act, 1963; that no notice was given under the agreement; that the suit was barred by limitation having been filed after three years from the date of the agreement; that payment of Rs. 3,500/- was not proved; that the agreement was a fictitious document executed in a state of sedation; and that the price was unconscionable.

16. Both the aforementioned Second Appeals were admitted *vide* order dated 23.05.2019, for ready reference the same is quoted herein below:

> "During pendency of this second appeal which has not been admitted till date, the sole respondent has died and his legal heirs have been substituted.
>
> Sri Surendra Pratap Singh, learned counsel has accepted notice on behalf of the legal representatives of sole respondent, thus notice to the respondent is sufficient.
>
> A regular suit was filed by the deceased-respondent i.e. Regular Suit No.38 of 1985 for cancellation of agreement of sale dated 12.09.1980 registered on 13.09.1980 wherein the appellants herein were impleaded as defendants. The appellants herein also filed a regular suit bearing Regular Suit No.90 of 1985 for specific performance of the agreement dated 12.09.1980 registered on 13.09.1980 coupled with a prayer for prohibitory injunction. Both the suits were tried together on the issues framed.
>
> This Court from the judgment and decree rendered by the trial court would gather that apart from the evidence of the deceased-respondent who was the plaintiff in Regular Suit No.38 of 1985, no other witness appears to have been produced for proving the case. The execution of the sale agreement was proved, however, the validity of the sale agreement became questionable on the ground of the mental state of the deceased-respondent.
>
> According to the deceased-respondent he was administered some medicine for some ailment and due to the medicinal effect he was not in a sound state of mind while executing the sale agreement. To discharge

> the burden of proof, no independent evidence was adduced by the deceased-respondent, however oral evidence of as many as five witnesses led by the defendant-appellants was disbelieved by the trial court and burden to disprove the case of the respondent plaintiff was also shifted upon the defendants.
>
> Both the appeals are admitted on the substantial question of law as under:-
>
> "Whether the evidence led by the defendant-appellant herein was rightly disbelieved by the trial court and the trial court was right in shifting the burden of proof upon the defendant- appellant in order to prove the validity of agreement under challenge."
>
> Both the parties are represented, thus notice to the respondent is deemed sufficient.
>
> Summon the lower court record forthwith.
>
> Let the paper book be filed not later than a period of four weeks from today.
>
> List in the second week of July, 2019.
>
> It is made clear interim order proposed to be passed shall be extended subject to the compliance of this order i.e.filing of the paper book and the period of four weeks shall reckon from the date of availability of lower court record so that there is no delay on the hearing of the appeal. The office shall intimate the learned counsel for the appellant about the availability of lower court record as soon as the same is received.”

17. This Court *vide* Order dated 14.01.2020 passed an interim order protecting the appellants from execution proceedings and the appeals were directed to be listed for early hearing.

18. The following substantial question of law was framed at the time of admission of the appeals:

> "Whether the evidence led by the defendant-appellant herein was rightly disbelieved by the trial court and the trial court was right in shifting the burden of proof upon the defendant-appellant in order to prove the validity of agreement under challenge."

19. Precisely, the contention as advanced by the Learned counsel for the appellant of the leading appeal is that the agreement in question is a registered document and, as per the provisions contained in Sections 101 to 104 of the Indian Evidence Act, 1872, the burden of proving that its execution was brought about by fraud or undue influence lay upon Kalu, who had asserted it, but the learned Trial Court, despite noticing due execution of the agreement, shifted the burden upon the defendants to

prove that the executant was in good health and of sound mind. He further submitted that execution of the agreement was proved by the attesting witness, the scribe and the Sub-Registrar himself, all of whom were cross-examined, and the provisions of Section 68 of the Evidence Act,1872 and its proviso were completely ignored; that the plea of fraud and undue influence was bald and without particulars as required under Order VI Rule 4 of the Code of Civil Procedure and no evidence apart from the statement of Kalu himself was led, nor any medical evidence to show that *filaria* or any medicine had disabled him of understanding; that the trial court, while dealing with Sections 14 to 22 of the Contract Act, merely observed that the allegations in the plaint attracted Section 17 of the Indian Contract Act,1872 without referring to any evidence of fraud; that Kalu remained silent for more than four years, delivered possession to Sadanand and, after six months of the agreement, himself executed a registered sale deed of his house in favour of Sadanand, which is inconsistent with the allegations of drugging and fraud; that Original Suit No. 90 of 1985 was filed within time and readiness and willingness had been pleaded; and that a plaintiff has to succeed on the strength of his own case and not on the weakness of the defence.

20. *Per contra*, learned counsel appearing for the respondent in the leading appeal has assertively argued that the said agreement was not registered on the day it was written but was presented on 13.09.1980 through a commission at the house of the stamp vendor, whereas the witnesses of the defendants stated that everything was done in a single day in the registration office and such contradictions affect the credibility of the defence; that the endorsement of the Sub-Registrar itself records that the executant was suffering from *filaria*; that Kalu had pleaded that he was administered medicine by the son of Sadanand, who runs a medical practice, and DW-1 admitted that Kalu had taken medicine on that day, whereupon the onus shifted upon the defendants; that Sections 14 to 17 of the Contract Act were rightly applied by the courts below and there are concurrent findings of fact; that Sadanand

never gave the registered notice or tendered the balance amount and purchased other property in the meantime and, therefore, the suit for specific performance was rightly dismissed; and that, in view of Section 16 of the Contract Act and Section 111 of the Evidence Act. To support his contention learned counsel has placed reliance upon the judgement passed by the Hon'ble Supreme Court in the case of **Raja Ram versus Jai Prakash Singh and others** reported in **(2019) 8 SCC 701**.

21. Heard the learned counsels for the respective parties, considered their rival submissions and perused the material available on record including the judgments of the courts below and the authorities cited at the Bar.

22. It is trite in law that ordinarily the High Court, while exercising jurisdiction under Section 100 CPC, do not reverse the findings of the Lower Appellate Court on facts, unless the findings are based on no evidence or are perverse. However, the question framed in the present appeals is not a question of mere appreciation of evidence. It relates to fixing of the burden of proof and to the disbelief of the evidence of the party on whom the burden did not lie. A finding recorded while wrongly casting the onus of proof, or on the basis of inferences which are not supported by any evidence on record, is a finding vitiated in law and gives rise to a substantial question of law. It is in this background that the matter is to be examined.

23. The Suit filed by Kalu, i.e. Original Suit No. 38 of 1985, was one for cancellation of a registered agreement which bears his own thumb impression, on the ground that the thumb impression was obtained by administering medicine to him and by taking advantage of his illness and of the confidence reposed by him in his neighbour. Section 101 of the Indian Evidence Act, 1872 provides that whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist, and under Section 102 the burden of proof lies on that person who would fail if no evidence at all were given on either side. If no evidence had been

led by either side, Kalu would have failed. The burden of proving the facts alleged by him, therefore, lay upon him from the very beginning.

24. In the case of **Anil Rishi versus Gurbaksh Singh** reported in **(2006) 5 SCC 558**, which has been followed in the case of **Rattan Singh** (*supra*), the Hon'ble Supreme Court has held as under:

> "10. Pleading is not evidence, far less proof. Issues are raised on the basis of the pleadings. The defendant-appellant having not admitted or acknowledged the fiduciary relationship between the parties, indisputably, the relationship between the parties itself would be an issue. The suit will fail if both the parties do not adduce any evidence, in view of Section 102 of the Evidence Act. Thus, ordinarily, the burden of proof would be on the party who asserts the affirmative of the issue and it rests, after evidence is gone into, upon the party against whom, at the time the question arises, judgment would be given, if no further evidence were to be adduced by either side.
> 11. The fact that the defendant was in a dominant position must, thus, be proved by the plaintiff at the first instance.
> ---
> 15. Section 111 of the Evidence Act will apply when the bona fides of a transaction is in question but not when the real nature thereof is in question. The words "active confidence" indicate that the relationship between the parties must be such that one is bound to protect the interests of the other."

25. In the case of **Raja Ram versus Jai Prakash Singh and others;** reported in **(2019) 8 SCC 701**, the Hon'ble Supreme Court, after referring to **Anil Rishi** (*supra*), has held that the onus shifts upon the original defendants under Section 16 of the Contract Act read with Section 111 of the Evidence Act "only after the plaintiff would have established a prima facie case".

26. In the case of **Uniworth Textiles Ltd. versus Commissioner of Central Excise, Raipur,** reported in **(2013) 9 SCC 753**, it has been held that the burden of proving any form of *mala fides* lies on the shoulders of the one who is alleging it.

27. The Hon’ble Supreme Court, in the case of **Chitra Kumari versus Union of India, (2001) 3 SCC 208**, has been pleased to observe that the averments made in the plaint are not sufficient on their own to establish a case unless they are pressed at every necessary stage and brought out in evidence.

28. So far as the legality of the aforesaid registered agreement is concerned; the Hon'ble Supreme Court in the case of **Prem Singh and others versus Birbal and others,** reported in **(2006) 5 SCC 353**, 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 1 has not been able to rebut the said presumption."

29. The aforesaid view has been followed in paragraph 32 of the judgment in **Rattan Singh and others Vs. Nirmal Gill and others** reported in ***(2021) 15 SCC 300***, wherein it has been held that the initial onus lies upon the plaintiff who challenges the registered document. Further, under Section 60(2) of the Registration Act, 1908, the certificate of registration is admissible for the purpose of proving that the document has been duly registered and that the facts mentioned in the endorsements referred to in Section 59 have occurred as therein mentioned. In the present case it is evident from the impugned order that the learned first appellate court itself has accepted the endorsement of the Sub-Registrar to be correct and, in Civil Appeal No. 142 of 1991, has described it as conclusive proof.

30. The proviso to Section 68 of the Evidence Act provides that it shall not be necessary to call an attesting witness in proof of the execution of a registered document, not being a Will, unless its execution by the person by whom it purports to have been executed is specifically denied. Since Kalu had denied the execution of the agreement, the defendants examined Ram Murat Singh (DW-3), an attesting witness, Ram Adhar

Mishra (DW-4), the scribe, and Sri Anjani Prasad Srivastava (DW-5), the Sub-Registrar who had registered the agreement, apart from Sadanand (DW-1). All of them identified the agreement and deposed that Kalu had put his thumb impression on it and that it was registered. DW-5 identified his endorsement on the document and admitted that the registration was done through a commission. Section 68 of the Indian Evidence Act requires the examination of at least one attesting witness and, therefore, the non-production of the second attesting witness, Shankar Datt, could not have been held against the defendants, as has been done by the first appellate court. This Court finds that the defendants had thus discharged the initial burden of proving due execution and registration of the agreement and the burden of proving that the execution was vitiated by fraud or undue influence remained throughout upon Kalu.

31. As is evident from the record that the learned Trial Court has recorded its finding that, in view of the admission of DW-1 that Kalu had taken tablets on that day, the burden lies upon the defendant to prove that Kalu had no illness and that he executed the agreement in a sound state of mind and that, since the plaintiff categorically denies the agreement, it is for the defendant to prove that the agreement was written by the plaintiff. This court is of the view that the aforesaid finding is not sustainable in law. The defendants were not required under law to prove that Kalu was free from illness, nor to prove a negative. Mere illness of the executant does not shift the onus upon the other party under Section 16(2)(b) of the Contract Act or Section 111 of the Evidence Act; it is for the party alleging it to prove, in the first instance, that the mental capacity of the executant was in fact affected and that the other party was in a position to dominate his will and used that position to obtain an unfair advantage. The learned first appellate court has failed to notice the same.

32. This Court now proceeds to examine whether Kalu had discharged the burden lying upon him. As has already been noticed in the order

dated 23.05.2019, the execution of the agreement was proved and, apart from the statement of Kalu himself, no other evidence was produced by him. Illness of Kalu is not in dispute. But mere illness is not incapacity. The only evidence regarding the events of 12/13 September 1980 is the statement of Kalu himself as PW-1. He did not examine any doctor, neighbour, relative or any other person who had seen him in an unconscious or confused state, nor did he produce any prescription or medical record. He also did not examine Achhey Lal, the stamp vendor, in whose house the registration was done by commission. Dr. Surya Narayan, who had allegedly administered the medicine, was a party to the Suit and Kalu did not summon him or examine him. In the opinion of this Court, the learned Trial Court committed an error in observing that the stamp-vendor would have been a material witness for the defendants; if a plea is taken by the plaintiff that no stamp was purchased from a particular person, it is for the plaintiff to examine that person.

33. The learned courts below have sought to supply the missing evidence on their own assumptions. The learned Trial Court has drawn an inference hypothetically from the answer of DW-1 that Kalu had taken a tablet on that day, that Kalu must have lost his awareness. DW-1 did not state that any sedative was given or that Kalu became unconscious; he stated that Kalu had taken medicine, which is also the case of Kalu himself, namely, that he was ill and was being treated. The learned first Appellate Court has observed that it is a matter of common experience that sedative medicines are given in *filaria* and cause thirst and since Kalu had asked for water, he must have been in a state of sedation. There is no evidence on record to show that *filaria* is treated with sedative medicines, or what medicine was given to Kalu, or that any medicine could have deprived him of understanding to the extent alleged. The Courts can take judicial notice of facts of common knowledge but cannot substitute a medical witness on a disputed question of that nature. The finding is based on surmise and, in the light of the observations made in paragraphs 38 and 83 of the judgment in **Rattan Singh** (*supra*) and

paragraphs 9, 10 and 16 of the judgment in **Raja Ram** (*supra*), wherein it has been held that cases cannot be decided on assumptions or presumptions and that incapacity cannot be presumed without evidence of the mental-status of the executant, is unsustainable.

34. The endorsement of the Sub-Registrar that the executant was suffering from *filaria* is also not a conclusive proof that he lacked understanding or senses. Under Sections 34 and 35 of the Registration Act, 1908 the registering officer is required to satisfy himself about the identity of the executant and to enquire whether the document was executed by him. The said endorsement records that the executant admitted the execution and the receipt of Rs. 3,500/- in the presence of witnesses. Kalu has led no evidence to show that these admissions were recorded from an unconscious person. No officer who attended him was examined by him. The courts below have treated the endorsement as correct for the purpose of holding that Kalu was ill but have disbelieved it so far as it records his admission. In **Raja Ram** (*supra*), the Hon'ble Supreme Court has held that the fact that the executant appeared before the sub-registrar "demolishes the entire case of the plaintiff" of incapacity; in the present case also the registration of the agreement after the examination of the executant strongly negates the case of unconsciousness set up by Kalu.

35. So far as the finding of the Trial Court under Sections 14 to 19 of the Contract Act is concerned, the trial court has observed that the case falls under Section 17 and that "if it is proved" that the defendants committed fraud, the agreement would be voidable under Section 19, and has thereafter concluded that the agreement is liable to be cancelled. The trial court has not pointed out any representation, concealment or act of the defendants which falls under any clause of Section 17, nor has it recorded any finding that fraud was in fact proved. For a case of undue influence under Section 16(1), it must be shown that the defendants were in a position to dominate the will of Kalu and used that position to obtain an unfair advantage. Neighbourly help rendered during illness does not

by itself establish such a position. In **Raja Ram** *(supra)*, it has been held that even where the defendants were looking after the executant and were in a fiduciary relationship, that *per se* could not lead to the only irresistible conclusion that they were in a position to dominate his will or that the transaction was unconscionable and that the onus would shift only after the plaintiff had established a *prima facie* case. No such *prima facie* case was established by Kalu.

36. The pleading of Kalu is also deficient. The plaint does not state in what manner and by what words he was deceived or what medicine was administered to him, but contains only a general allegation that some intoxicating medicine was given and that the defendants conspired. His primary case was that he never executed any agreement, never purchased the stamp, never went to the scribe and never called the Registrar, whereas his alternative case was that his thumb impression was taken in a state of unconsciousness. Neither of these pleas is a plea of consent vitiated by fraud or undue influence of the kind contemplated under Sections 14 to 19 of the Contract Act, where the act is admitted but the consent is not free. The learned trial court itself has recorded that Kalu indirectly admitted his thumb impression and thereafter granted cancellation on the ground of voidability which was not pleaded with the particulars required under Order VI Rule 4 CPC. The Hon'ble Supreme Court in the judgement rendered in the case of **Raja Ram** (*supra*), has quoted the following observations made in **Bishundeo Narain versus Seogeni Rai,** reported in **1951 SCR 548**:

> "22. ... if there is one rule which is better established than any other, it is that in cases of fraud, undue influence and coercion, the parties pleading it must set forth full particulars and the case can only be decided on the particulars as laid. There can be no departure from them in evidence."

37. In view of the above it can be easily inferred that a decree of cancellation under Section 31 of the Specific Relief Act, 1963 could also not have been passed unless the instrument was proved to be void or voidable against the plaintiff.

38. The learned courts below have held that the statements of the witnesses of the defendants were so contradictory that the agreement became doubtful. This Court has gone through the statements of DW-1 to DW-5. The variations pointed out relate to collateral matters, namely, whether the agreement was written and registered on the same day or on the next day, whether Kalu went to the registration office or to the house of the stamp vendor, where Rs. 3,500/- was paid and who was present when the bargain was settled. The transaction took place in September 1980, the suits were instituted in 1985 and the evidence was recorded later on. It is not expected from village witnesses to recollect, after eight or nine years, the details of a transaction with documentary precision. The endorsement of the Sub-Registrar, being a contemporaneous record of the registering officer, is the safer guide. The essential case of the defendants, namely, that the agreement was written by the scribe at the instance of Kalu, that Kalu put his thumb impression on it in the presence of the attesting witness, that the agreement was registered and that Kalu admitted before the registering authority its execution and the receipt of Rs. 3,500/- in the presence of witnesses, has remained consistent in the statements of all the witnesses and is supported by the endorsement. The minor contradictions, natural in the course of examination of witnesses, do not affect the substratum of their testimony and the learned courts below, in the opinion of this Court, have given them undue importance.

39. The learned courts below have also treated it as a contradiction that DW-5 stated that he had never gone to the house of Achhey Lal (Stamp Vendor), whereas the endorsement records registration at that place. The endorsement itself records that the registration was done through a commission and the commission is executed not by the Sub-Registrar but by the person to whom it is issued. There is, therefore, no contradiction between the endorsement and the statement of DW-5. Any irregularity in the procedure of the commission, or in the record of the application for commission, is not a ground for disbelieving the

execution of the agreement; Section 87 of the Registration Act, 1908 provides that nothing done in good faith by a registering officer shall be deemed invalid merely by reason of any defect in procedure. It was open to Kalu to dispute the record of the commission or to examine the person who had executed it, if he wanted to show that the thumb impression was not taken in the manner recorded, but he did not do so. The finding of the courts below that the evidence of DW-5 was contradictory is, therefore, based on a misreading of the evidence.

40. It is an admitted position that on 13.03.1981, i.e. six months after the agreement, Kalu himself executed a registered sale deed of his old house in favour of the same Sadanand. The said conduct of Kalu is also inconsistent with the case set up by him. It is surprising that a person who alleges that Sadanand and his family had made him unconscious by administering medicine and had defrauded him in September 1980, willingly sold his house to the same person after six months. The reasoning recorded by the learned first appellate court, that since Sadanand had paid Rs. 2,600/- for the house, he could have paid Rs. 1,000/- for the disputed land and, therefore, the agreement was fictitious; is based on conjecture and as such, is not sustainable. Further, the agreement in question did not fix any date for payment of the balance amount; the balance amount was payable at the time of the execution of the sale deed, after the notice by the purchaser. The fact that the purchaser entered into another transaction with the vendor does not show that there was no agreement in respect of the disputed land; on the contrary, the two transactions show a continuing relationship between the parties. Kalu has also not explained why he did not question the agreement for four years and four months after it was registered and why the appellants, as per their case, were permitted to enter the land and raise construction thereon during this period. His claim that he came to know about the agreement only in December 1984 does not inspire confidence.

41. So far as the question of price is concerned, the agreement is for Rs. 4,500/- for the land measuring 18x14 *latha*. The assertion of Kalu that the land was worth Rs. 50,000/- or more is not supported by any sale instance, valuation report or other evidence of the market value of the land in the year 1980. The learned courts below have relied upon the oral statements of the witnesses regarding the rates allegedly prevailing at the time of recording of evidence. At this stage it is to be to noted that the Explanation 2 to Section 25 of the Indian Contract Act, 1872 provides that an agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate, though the inadequacy may be taken into account in determining whether the consent was freely given. Similarly, under the Explanation 1 of Clause 2 of Section 20 of the Specific Relief Act, 1963, as it stood at the relevant time, mere inadequacy of consideration or the fact that the contract is onerous or improvident does not constitute unfair advantage. The presumption under Section 16(3) of the Contract Act arises only where the party is in a position to dominate the will of the other and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable and, as discussed herein above, no such position of domination was established.

42. From all that is discussed herein above, this Court finds that the evidence led by the defendants was wrongly disbelieved by the learned courts below; that the learned Trial Court wrongly shifted the burden of proof upon the defendants to prove that Kalu was in good health and in a sound state of mind at the time of execution of the agreement and the first appellate court failed to note the said legal infirmity in the finding and affirmed the same on the basis of assumptions not supported by any evidence; and that Kalu had failed to discharge the burden of proving that the registered agreement dated 12.09.1980 was vitiated by fraud or undue influence. The presumption attached to a registered document was not rebutted. In the case of **Punjab Urban Planning and Development Authority versus Shiv Saraswati Iron and Steel Re-Rolling Mills,**

reported in **(1998) 4 SCC 539**, it has been held that a plaintiff/appellant has to succeed or fail on his own case. In the light of the above, Kalu could not have been granted a decree on the supposed weakness of the evidence of the defendants.

43. The substantial question of law is accordingly answered in negative, in favour of the defendant-appellants and against the plaintiff-respondent.

44. The findings recorded by the trial court on the remaining issues of Original Suit No. 38 of 1985 were wholly consequential to the cancellation of the agreement. The finding that Kalu was the owner in possession of the land was based on the cancellation of the agreement and the finding on the removal of the manger and pegs and on the observance of the terms of the agreement by Sadanand were also derived from it. Once the finding in respect of cancellation of the agreement is found unsustainable in law, the consequential findings becomes redundant.

45. The ownership of Kalu in respect of the property in question before the agreement in dispute, was never under challenge. However, it is not necessary to determine who was in actual physical possession of the same, on the date of the Suit.

46. As far as Second Appeal No. 108 of 1994 is concerned, Original Suit No. 90 of 1985 was dismissed by the learned courts below primarily on the ground that the agreement was a fictitious and fraudulent document. The aforesaid ground having been found to be unsustainable, the additional grounds recorded by the learned first appellate court in Civil Appeal No. 142 of 1991 are required to be examined.

47. The First Appellate Court held that the plaint did not state that the plaintiff was ready and willing in the past and would remain so in the future, and that the forms given in Appendix-A were mandatory. The requirement of Section 16(c) of the Specific Relief Act, 1963 is one of substance and not of form and the plaint is to be read as a whole. The

plaint in Original Suit No. 90 of 1985 states that the plaintiff is ready to pay the balance amount of Rs. 1,000/- and to get the sale deed executed in terms of the agreement and that it was Kalu who had refused to perform the agreement on 19/20.01.1985 and by filing Original Suit No. 38 of 1985 had repudiated it. The forms in Appendix A are to be used with such variations as the circumstances of the case may require (Order VI Rule 3 CPC) and the defendants, who have framed and contested an issue on the observance of the terms of the agreement by the plaintiff, were not prejudiced in any manner. Nothing was brought on record to show that Sadanand was ever unwilling or unable to pay the balance amount of Rs. 1,000/-, and the suit was filed within about twelve days of the suit of Kalu repudiating the agreement. The fact that he did not tender the balance amount earlier is explained by the terms of the agreement under which the tender was to follow his notice and no date was fixed for execution of the sale deed. Readiness and willingness have, therefore, been made out.

48. The courts below have held that, in the absence of a registered notice under clause 4 of the agreement, no cause of action had arisen in favour of Sadanand and he himself was in breach of the agreement. This finding is not sustainable. The notice was a mechanism by which the purchaser was to call upon the vendor to execute the sale deed within fifteen days after the balance amount was ready, and the consequence of failure to get the sale deed executed after such notice was that the agreement would be treated as canceled. Since no notice was given, that consequence was never attracted; the agreement did not provide that absence of a notice would render it void and time was not made of the essence. Moreover, a notice would have been an empty formality when Kalu had himself challenged the agreement as a nullity by filing Original Suit No. 38 of 1985 on 15.01.1985 and, according to the plaint of Original Suit No. 90 of 1985, had refused to perform it on 19/20.01.1985. A vendor who has repudiated the agreement cannot insist upon a notice as a condition of its performance.

49. As regards limitation, the first appellate court computed the period of three years from the date of the agreement, i.e. 12.09.1980, although it has itself recorded that where no time is fixed for performance, limitation runs from the date when the plaintiff has notice that performance is refused. Article 54 of the Schedule to the Limitation Act, 1963 provides that the period of three years runs from the date fixed for the performance or, if no such date is fixed, when the plaintiff has notice that performance is refused. In the present case, no date was fixed for the performance since it depended upon a notice to be given by the purchaser. The earliest refusal on the record is the suit of Kalu instituted on 15.01.1985 or, as per the case of the plaintiff, his refusal on 19/20.01.1985, and Original Suit No. 90 of 1985 was instituted on 31.01.1985, well within the period of limitation. The trial court had also held the suit to be within time. The finding of the first appellate court that the suit was barred by limitation for want of a notice within three years, which treats the absence of the notice both as the bar and as the cause of action, is erroneous in law.

50. The first appellate court has also held the payment of Rs. 3,500/- to be unproved on the ground that Kalu did not appear before the Sub-Registrar and the money was paid outside his office. The agreement itself recites the payment; the endorsement of the Sub-Registrar records that Kalu admitted the receipt of Rs. 3,500/- in the presence of witnesses, which the first appellate court itself regarded as conclusive; and DW-1, DW-3 and DW-5 have deposed to it. The place where the money was handed over is a collateral matter. The statement of Kalu that he received no money is the only evidence to the contrary and, in the absence of any proof of fraud, is not sufficient to rebut the recital in the registered agreement. The observation of the first appellate court that an agreement to sell does not create any interest in the property under Section 54 of the Transfer of Property Act, 1882 is correct but is not relevant since Sadanand claims specific performance of the agreement and not title under it. The purchase of other property by Sadanand, i.e. the house in

the year 1981 and the land purchased from Rajesh Kumar Jaiswal in the year 1986, has no bearing on his readiness and willingness to perform the present agreement.

51. In view of the deliberations and observations made herein above, this Court is of the considered opinion that the agreement dated 12.09.1980 is a genuine and enforceable agreement, that the appellants have been ready and willing to perform it, that Original Suit No. 90 of 1985 was filed within the period of limitation and that no ground exists under Section 20 of the Specific Relief Act, 1963 for refusing the decree of specific performance. The judgments and decrees passed by the learned Trial and Appellate Court, are, therefore, unsustainable in law and are liable to be set aside.

52. Accordingly, both the second appeals stand **allowed**. The common judgment and order dated 06.01.1994 passed by the learned Second Additional District Judge, Sultanpur in Civil Appeal No. 143 of 1991 and Civil Appeal No. 142 of 1991 and the common judgment and decrees dated 31.05.1991 passed by the learned Fourth Additional Munsif, Sultanpur in Original Suit No. 38 of 1985 and Original Suit No. 90 of 1985 are hereby **set aside**.

53. Original Suit No. 38 of 1985 (Kalu versus Sadanand and others) is **dismissed**.

54. Original Suit No. 90 of 1985 (Sadanand versus Kalu) is decreed for specific performance of the agreement to sell dated 12.09.1980 with the following directions:

(i) The appellants (legal representatives of the plaintiff, Sadanand) shall deposit the balance sale consideration before the learned Trial Court concerned within a period of two months from today.

(ii) On such deposit, the respondent (legal representatives of Kalu) shall execute and get the sale deed registered in respect of the land in

question in favour of the appellants within a period of two months from the date of deposit of the balance consideration.

(iii) The stamp duty and registration charges shall be borne by the appellants.

(iv) In case the respondent fails to do so, the appellants shall be entitled to get the sale deed executed through the Court in accordance with Order XXI Rule 34 of the Code of Civil Procedure.

(v) The respondent and his legal representatives shall not, in the meantime, transfer or create any third party interest in the disputed land and the parties shall maintain *status quo* with regard to possession till execution of the sale deed.

55. In view of the long passage of time and the death of both the principal parties, parties shall bear their own costs in these second appeals. The orders as to costs passed by the courts below are set aside.

56. A decree be drawn up accordingly. The lower court record be transmitted to the court concerned at the earliest.

(Syed Qamar Hasan Rizvi,J.)

November 05, 2026
Manoj Kr./Virendra

Digitally signed by :-
VIRENDRA KUMAR GUPTA
High Court of Judicature at Allahabad,
Lucknow Bench