A RATTAN SINGH & ORS.

v.

NIRMAL GILL & ORS. ETC.

(Civil Appeal Nos. 3681-3682 of 2020 etc.)

B NOVEMBER 16, 2020

[A.M. KHANWILKAR AND DINESH MAHESHWARI, JJ.]

Deeds and Documents:

Suits for declaring sale-deeds as illegal and void which were C *executed by Power of Attorney-holder of plaintiff and also those executed by the plaintiff herself – Alleging fraud in execution of the General Power of Attorney (GPA) and the sale deeds by misusing the trust reposed in defendants – Trial court dismissed both the suits – First appellate court partly allowed one of the appeals and* D *dismissed the other appeal – High Court reversed the finding of the courts below – Appeal to Supreme Court – Held: The disputed documents were registered and hence are presumed to be genuine – The initial burden to prove that the subject documents were forged or product of fraud, was on the plaintiff – Plaintiff failed to prove the facts of misuse of trust by the defendants – No tangible and* E *credible evidence was led by the plaintiff to prove that the GPA as well as the sale deeds were effected by impersonating her – Since the attesting witness had proved the execution of the sale deeds, the primary onus upon the plaintiff had not shifted unto the defendants – The testimony of attesting witness, scribe and other independent witnesses support the case of defendants – Since the plaintiff could* F *not establish existence of fraud, the suits were ex-facie barred by limitation – The views of trial court and appellate court being a possible view, High Court should not have disturbed the same in second appeal that too on surmises and conjectures.*

Sale deed – Signature of vendee on – Is not mandatory.

G

Evidence:

Registered document – Evidentiary value – A document is presumed to be genuine, if it is registered.

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Standard of proof – In civil disputes – Is preponderance of probabilities and is not beyond reasonable doubt.

Expert evidence – Nature of – Expert opinions are not a binding piece of evidence and they need to be corroborated.

Evidence Act, 1872:

s. 90 – 30 years old document – Is presumed to be genuine.

Limitation Act, 1963:

s. 17 – For invoking s. 17, two ingredients have to be pleaded and duly proved i.e. existence of fraud and discovery of such fraud.

Practice and Procedure:

A hypersensitive approach ought not be taken in cases where there has been delay in recording evidence.

Words & Phrases:

"attested" – Meaning of, in the context of s. 3 of Transfer of Property Act, 1882.

Allowing the appeals, the Court

HELD : 1.1 The record reveals that the disputed documents are registered. It is settled legal principle that a document is presumed to be genuine if the same is registered. [Para 32][446-A-C]

Prem Singh and Ors. v. Birbal and Ors. **(2006) 5 SCC 353 : [2006] 1 Suppl. SCR 692 – relied on.**

1.2 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. The High Court, however, went on to observe that defendants had abused their position of active

confidence. For shifting the burden of proof, it would require more than merely pleading that the relationship is a fiduciary one and it must be proved by producing tangible evidence. [Paras 40 and 41][448-E-G][449-B-C]

Anil Rishi v. Gurbaksh Singh **(2006) 5 SCC 558 : [2006] 1 Suppl. SCR 659 – relied on.**

1.3 The defendants enjoyed active confidence of the plaintiff. It is an admitted position that the plaintiff and defendants always had cordial relationship and the plaintiff was on visiting terms. Further, the fact that the defendant Nos. 3 and 4 were cultivating the joint lands is also not disputed. Defendant Nos. 3 and 4 were cultivating the lands along with their father and continued to do so even after his death. The plaintiff had failed to prove the fact of misuse of trust by the defendants as such. [Para 42][450-F-H]

1.4 Further, the plaintiff attempted to project the 1990 General Power of Attorney (GPA) as a doubtful document stating that the same had discrepancies with respect to the address and the alteration of the date of execution. In absence of the attesting witness and in view of the evidence of PW4-scribe, it was for the plaintiff to get PW4 declared hostile and cross-examine him in order to prove that he had deposed falsely, which the plaintiff failed to do. [Para 43][450-H; 451-A-B]

1.5 Emphasis was laid on the entries made in the PW4 scribe's register showing the 1990 GPA to have been executed prior to the sale deed and it was submitted that there is no logic in first giving GPA and then executing sale deed if the plaintiff was available to execute the aforesaid documents. However, the same is of no avail to the plaintiff as the 1990 GPA was in respect of all her land holdings, whereas the sale was made only in respect of a portion of the land. [Para 44][451-B-C]

1.6 The primary reason for executing the 1990 GPA was that the plaintiff was not residing in Punjab at the relevant point of time and that she was old and weak, and thus unable to look after her property situate at Punjab. The stress laid upon the fact that a woman was appointed in her place is, therefore, a matter of surmises and conjectures. [Para 45][451-C-E]

1.7 The plea that the registration of the 1990 GPA as well as the sale deeds, had been effected by impersonating the plaintiff has not been proved. No credible and tangible evidence has been led in that regard. [Para 46][451-E-F]

1.8 The plaintiff's denial of being acquainted with the attesting witnesses, is, also a ruse and not genuine. For, one of the attesting witnesses was a lamberdar of the village. A lamberdar's job is to collect revenue in respect of the lands and issue receipts and as a practice, the lamberdar is called for attesting documents. Thus, when the plaintiff admittedly used to visit village frequently, her denial in knowing him is far-fetched. This is what two Courts had opined and being a possible view, no interference by the High Court was warranted in that regard. That is beyond the scope of second appeal. [Para 47][451-F-H]

Satya Gupta (Smt.) alias Madhu Gupta v. Brijesh Kumar **(1998) 6 SCC 423 : [1998] 3 SCR 1183 – relied on.**

2.1 With regard to the sale deed dated 03.07.1990, the plaintiff had asserted that the same was not executed by her. The sale deed requires attestation by two witnesses and the same has to be proved as per procedure laid down under Section 68 of the Evidence Act. The sale deed of 03.07.1990 had been attested by Lamberdar and DW3. The attesting witness (DW3) had deposed that the said sale deed was executed by the plaintiff in his presence, as well as in presence of Lamberdar and defendant No. 3. However, defendant No. 4 had deposed that he was present at the time of execution of the sale deed on 03.07.1990 which was executed by the plaintiff in favour of defendant No. 3 and himself. He stated that Lamberdar and 'G' were also present. The High Court held that testimony of DW3 was of no avail to the defendants to prove the said sale deed, because he had no clue regarding passing of consideration to the plaintiff. Further, the defendants had failed to prove the fact of handing over consideration amount to the plaintiff. Also, defendant No. 4 and DW3 denied each other's presence. [Paras 48, 52, 53, 54, 56][452-D; 453-E-G; 454-G-H; 455-A-B]

A *Jagdish Chand Sharma v. Narain Singh Saini (dead) through legal representatives & Ors.* **(2015) 8 SCC 615: [2015] 6 SCR 397 – relied on.**

2.2 A hypersensitive approach ought not be taken in cases where there has been a delay in recording evidence. In the present B **cases, the disputed documents were executed in the year 1990 and the evidence of DW3 was recorded in the year 2007, after a passage of 17 long years. The High Court erroneously doubted the evidence of DW3 merely because he could not identify photographs of plaintiff and because the defendant No. 4 and DW3** C **did not mention each other's presence at the time of execution. [Para 55][453-G-H; 454-F-G]**

Damodar v. State of Rajasthan **(2004) 12 SCC 336 : [2003] 3 Suppl. SCR 904 – relied on.**

2.3 As per the definition of 'attested' under Section 3 of D **the Transfer of Property Act, 1882 "attested", in relation to an instrument, means and shall be deemed always to have meant attested by two or more witnesses each of whom has seen the executant sign or affix his mark to the instrument ....and each of whom has signed the instrument in the presence of the executant. The disputed sale deed dated 03.07.1990 was signed by plaintiff** E **as vendor and defendant No. 3 as vendee and in the presence of DW3 and the other attesting witness i.e. the Lamberdar. DW3 as an attesting witness had seen both plaintiff and defendant No. 3 signing the deed and he then attested the sale deed. The High Court failed to note that the other attesting witness being dead** F **and his signature having been identified by DW2 and DW4, and with the testimony of PW4 scribe, the evidence of the DW3 witness stood corroborated and therefore, the same could not be disregarded. [Paras 57 and 58][455-B-G]**

2.4 Since defendant No. 4 has not signed the sale deed as a G **vendee, his evidence cannot be discarded, as signature of the vendee is not mandatory in a sale deed. In any case, the weight of evidence of DW3 remains unassailable. Therefore, the testimony of DW3 satisfies the requirements of the conditions required for a valid attestation. [Paras 60 and 61][457-A-B; 458-F-G]**

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Aloka Bose v. Parmatma Devi and Ors. **(2009) 2 SCC 582 : [2008] 17 SCR 822 – relied on.**

2.5 Since the attesting witness had proved the execution of the sale deeds, the primary onus upon the plaintiff had not shifted unto the defendants. Further, the plaintiff was obliged to rebut the positive evidence produced by the defendants regarding payment of consideration amount to the plaintiff; but also ought to have independently proved her case of non-receipt of the consideration amount. [Para 62][459-B-C]

2.6 It is settled that the standard of proof required in a civil dispute is preponderance of probabilities and not beyond reasonable doubt. In the present cases, though the discrepancies in the 1990 GPA are bound to create some doubt, however, in absence of any tangible evidence produced by the plaintiff to support the plea of fraud, it does not take the matter further. Rather, in the present case the testimony of the attesting witness, scribe and other independent witnesses plainly support the case of the defendants. That evidence dispels the doubt if any; and tilt the balance in favour of the defendants. [Para 80][465-C-E]

3.1 The plaintiff got her admitted signatures compared with the signatures on the disputed documents by a handwriting expert, PW10 who had come to a conclusion that the disputed signatures were a result of copied forgery. On the contrary, the defendants had also got the same document examined by their expert, DW7, who had determined the disputed signatures to have been signed by plaintiff herself. [Para 64][459-D-E]

3.2 The expert evidence produced by the plaintiff in reference to the signature of the plaintiff is of no avail, in view of divergent opinions. The ground that the documents were a result of copied forgery cannot be substantiated only on the basis of the opinion of expert PW10. Even otherwise, the expert opinions are not a binding piece of evidence and have to be corroborated with other pieces of evidence. The plaintiff failed to prove that her signatures on the subject documents are forged. [Para 65][459-F-G]

4.1 The 1963 GPA is claimed to have been discovered during the enquiries made by the plaintiff subsequent to attaining knowledge of the fraud. The trial court accepted that the plaintiff had executed the 1963 GPA and further she had knowledge of the sanction of mutation in pursuance of that GPA. [Paras 66 and 67][459-H; 460-B-C]

4.2 The 1963 GPA is a document which is more than 30 years old. Section 90 of the Evidence Act provides for the presumption in favour of a 30-year old document. The aforesaid provision employs the words 'may presume'. As per Section 4 of the Evidence Act, the presumption in favour of a 30-year old document is, therefore, a rebuttable presumption. Nothing prevented the plaintiff to rebut the presumption by leading appropriate evidence in order to disprove the same. Since the plaintiff failed to do so, the said document would be binding on the plaintiff. As a matter of fact, the parties had acted upon the terms of the said document without any demur since 1963 and it was, therefore, not open to resile therefrom at this distance of time. Hence, the trial Court was right in holding the 1963 GPA, to be a genuine document. [Paras 69, 70 and 71][460-E-F; 461-B-E]

5.1 Since the plaintiff could not establish the existence of fraud, it must follow that the suits are *ex-facie* barred by limitation. For invoking Section 17 of the Limitation Act, 1963 two ingredients have to be pleaded and duly proved. One is existence of a fraud and the other is discovery of such fraud. In the present case, since the plaintiff failed to establish the existence of fraud, there is no occasion for its discovery. Thus, the plaintiff cannot be extended the benefit under the said provision. [Paras 78 and 81][464-F-G; 465-E]

5.2 The concurring findings recorded by the trial Court and the first appellate Court - that the documents were executed by the plaintiff - belies and demolishes the case of the plaintiff, as to having acquired knowledge of alleged fraud in 2001. Therefore, the High Court committed manifest error in reversing the concurrent findings of the trial Court and the first appellate Court in that regard. [Para 79][465-A-C]

6. As to the title of the subsequent purchasers, since the 1990 GPA had been proved, there is no reason to doubt their bonafides. The trial Court and the first appellate Court had appreciated the evidence properly and that view being a possible view, the High Court ought not to have disturbed the same in the second appeal and that too on surmises and conjectures. [Paras 82 and 83][465-F-G]

Case Law Reference

[2006] 1 Suppl. SCR 692	**relied on**	**Para 32**
[2006] 1 Suppl. SCR 659	**relied on**	**Para 41**
[1998] 3 SCR 1183	**relied on**	**Para 47**
[2003] 3 Suppl. SCR 904	**relied on**	**Para 55**
[2015] 6 SCR 397	**relied on**	**Para 59**
[2008] 17 SCR 822	**relied on**	**Para 60**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3681-3682 of 2020.

From the Judgment and Order dated 27.05.2019 of the High Court of Punjab and Haryana at Chandigarh in RSA No. 2901 of 2012 (O&M) and RSA No. 3881 of 2012 (O&M).

With

Civil Appeal Nos. 3683-3684 of 2020.

T.S. Doabia, Sr. Adv., Dinesh Verma, Rajat Verma, Subhasish Bhowmick, Jagjit Singh Chhabra, Saksham Maheshwari, Advs. for the appearing parties.

Caveator-in-person

The Judgment of the Court was delivered by

A. M. KHANWILKAR, J. 1. Leave granted.

2. These appeals take exception to the common Judgment and decree of the High Court of Punjab and Haryana at Chandigarh[1], dated 27.05.2019 in R.S.A. Nos. 2901/2012 and 3881/2012, whereby the High

[1] for short, "the High Court"

A Court reversed the concurrent findings of the trial Court and the first appellate Court and decreed the suits of the plaintiff.

3. For convenience, the parties are referred to as per their status in Civil Suit No. 11/2001 before the Court of Civil Judge (Senior Division), Hoshiarpur[2]. The admitted factual position in the present cases is that
B one Harbans Singh had married Gurbachan Kaur and fathered Joginder Kaur (plaintiff – now deceased) in the wedlock. After the demise of Gurbachan Kaur, Harbans Singh married Piar Kaur and in that wedlock, he fathered Gurdial Singh (defendant No. 3), Rattan Singh (defendant No. 4), Narinder Pal Singh (defendant No. 5) and Surjit Singh (defendant
C No. 6). Harcharan Kaur (defendant No. 1) is the wife of defendant No. 4 and the step sister-in-law of the plaintiff. Nirmal Gill (respondent herein) is daughter and the legal representative of the plaintiff (Joginder Kaur) and Charanjit Singh is her (plaintiff's) son.

4. Harbans Singh was the owner of various stretches of land at Nawanshahr, Jalandhar and Hoshiarpur which, upon his death in the
D year 1963, devolved upon the plaintiff, her step brothers - defendant Nos. 3 to 6 and her step mother in six equal shares.

5. The plaintiff and the defendant Nos. 3 to 6 had cordial relations and the plaintiff used to frequently visit her maternal home.

E 6. The dispute between the parties pertains to a General Power of Attorney (GPA) purported to have been executed by the plaintiff on 28.06.1990[3] in favour of defendant No. 1 and consequently sale deeds executed by defendant No. 1 as an attorney of the plaintiff. Sale deeds dated 29.06.1990 and 03.07.1990 purported to have been executed directly by the plaintiff are also disputed by the plaintiff. The case of the plaintiff
F is that the defendants sought her signatures on blank papers in the year 1990 under the guise of preparation and processing of documents for the purpose of getting the estate left behind by their father mutated in their names. Reposing complete trust in her step brothers, the plaintiff signed the papers and handed it over to the person tasked for that purpose
G by the step brothers - defendant Nos. 3 to 6. Thereafter, the defendant No. 3 visited plaintiff's matrimonial home at Delhi asking her to come to village Kalyanpur in June 1990 for getting the said mutation effected. Accordingly, the plaintiff visited the village and stayed there for 3 or 4 days.

[2] for short, "the trial Court"

H [3] for short, "the 1990 GPA"

7. Subsequent to the retirement of her husband in the year 1999, the plaintiff shifted to Mohali and being closer to her maternal home, the frequency of her meeting the relatives increased. In a wedding function of a relative at Jalandhar in February 2001, where the plaintiff and her step brothers - defendant Nos. 3 to 6 were present, one of her cousins Rustam Singh had mentioned to her in a conversation that the defendant Nos. 3 to 6 had sold a part of the property which they jointly held with the plaintiff.

8. Upon learning about the said fact, the plaintiff made enquiries in that regard including verified revenue records whence she learnt about existence of a GPA purported to have been executed in 1963[4] by all the legal heirs of Harbans Singh including the plaintiff, in favour of defendant No. 3 and based on the said GPA, the estate of Harbans Singh had already been mutated in their joint names in November 1963. The plaintiff also discovered the existence of aforementioned disputed documents which were executed without her knowledge, during her visit to the village in the year 1990. The plaintiff claimed the aforementioned documents to be a result of fraud perpetrated upon her by her step brothers - defendant Nos. 3 to 6 and her step sister-in-law - defendant No. 1, who got those documents scribed, forged the plaintiff's signature onto them and got them registered.

9. On the other hand, the defendants denied that defendant No. 3 went to Delhi to call the plaintiff to village Kalyanpur. They claimed that the plaintiff had come there on her own and stayed with the defendant Nos. 3 to 6 for about a month. She had personally instructed the scribe to prepare the aforesaid documents and she had duly executed and got them registered. Therefore, all the transactions made by the plaintiff directly, as well as through her constituted attorney, are valid.

10. In this backdrop, the plaintiff instituted a suit being C.S. No. 11/2001 before the trial Court on 23.04.2001 against the aforementioned defendant Nos. 1, 3 to 6 and 19 others, seeking declaration as hereunder:

> "i, That the sale-deed dated 05.07.2000 vide document No. 2213 of land measuring 2 Marla 5 Sarsahi being 1/2 share of the land measuring 7 Marlas 2 Sarsahi bearing Khewat No. 1401, Khatauni No. 2098, Khasra No. 6967 (3-5), situated in Village Premgarh, H.B. No. 247, Tehsil and District Hoshiarpur, as per Jamabandi

[4] for short, "the 1963 GPA"

A for the year 1996-97 by defendant no. 1 as Mukhtar of the plaintiff in favour of defendant no. 2 is illegal, void and ineffective as against the rights of the plaintiff and that the mutation no. 13795 to the extent of 1/2 share of 65/68th share i.e. 1/2 share of 7 Marlas 2 Sarsahi is null and void and is liable to be set aside and the plaintiff is not bound by the same.

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ii, That the plaintiff is owner in possession of the land measuring 9 Marla out of the land measuring 4 Kanals 13 Marla bearing Khewat No. 1400, Khatauni No. 2097, Khasra No. 2773/694 (0-11), 2774/694 (0-4), 2775/694 (0-1), 2776/694 (0-1), 2777/695 (0-3), 2778/695 (0-6), 2779/695 (0-8), Khewat No. 1463, Khatauni C No. 2166 to 2168, Khasra No. 689 (2-19) situated in Premgarh, Hoshiarpur, H.B. No. 247, Tehsil and District Hoshiarpur, as per Jamabandi for the year 1996-97. And restraining the defendant no. 1 from alienating or transferring the land in dispute in any manner on the basis of General power of attorney dt. 28.06.90.

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iii, That the sale deed dated 29.05.1990 in respect of the land measuring 39 Kanals 4 Marlas out of the land measuring 235 Kanals 6 Marlas being 1/6 share out of the land measuring Kahata No. 46/60 to 67 and 36/56 Khasra Nos. 20R/21 (0-14), 21R/24/1 (3-11), 23R/7 (5-11), 8/1 (2-13), 15/1 (1-6), 106//(0-14), 131 (2-19), 16-R/17 (1-6), 25 (6-18), 16-R/16 (8-0), 17-R/13/2 (6-4), 14/1 (1-0), 21 (8-0), 22 (8-0), 23 (8-0), 24/1 (5-0), 24/2 (2-4), 25 (8-0), 18-R/11/1 (2-8), 23-R/8/2 (2-6), 24-R/1 (2-0), 10 (6-5), 11/1 (1-14), 23-R/3/2 (5-40), 4 (8-0), 5 (8-0), 6 (7-12), 17-R/14/2 (6-4), 15 (8-0), 16 (8-0), 17/1 (4-4), 17-R/17/2 (3-0), 18 (8-0), 19 (8-0), 20 (8-0), 18-R/19 (8-0), 20 (8-0), 21 (8-0), 22 (8-0), 21-R/1/1 (7-4)m, 4/2 (5-5), 23/2 (4-1), 25 (2-13), 22-R/5 (3-0), 21-R/23/2-min (1-3), 104/2 (0-2), 23-R/26 (0-14), 53//1 (2-7), situated in Village Kalyanpur, H.B. No. 144, Tehsil Dasuya, District Hoshiarpur is illegal, void and has been obtained by way of fraud and the declaration that the plaintiff is owner in possession of land in dispute. In the alternative suit of joint possession.

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iv, And declaration that the General Power of Attorney dated 28.06.1990 obtained by defendant no. 1 in connivance with her husband Rattan Singh defendant no. 4 is the result of fraud and that the plaintiff is not bound by the same as well as any transaction made by the defendant no. 1 on behalf of the plaintiff are also

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illegal and void and are liable to be set aside and that the defendant no. 1 has no power to act as General Attorney of the plaintiff." A

11. While the said suit was pending, the plaintiff discovered existence of more documents executed by her alleged attorney and thus filed another suit being C.S. No. 173/2002 on 12.06.2002 before the trial Court, wherein the defendant No. 4 was arrayed as defendant No. 1, defendant Nos. 3, 5 and 6 were arrayed as defendant Nos. 2 to 4 respectively and defendant No. 1 was arrayed as defendant No. 11. Inder Pal Singh and Rajinder Kaur[5], who purchased the plot at Jalandhar through the alleged attorney of the plaintiff, were arrayed as defendant Nos. 9 and 10. The prayer in the said suit was for declaration as hereunder: B C

"i. That the sale deed and mutation no. 11395 regarding the land measuring 1 Kanal 6½ Marlas out of land measuring 6 Kanals 4 Marlas bearing Khewat No. 602, Khatauni No. 662, Khasra No. 85/17 (6-14) by defendant no. 11 as attorney of plaintiff in favour of defendant no. 8 situated in Village Bajwara, H.B. No. 355, Tehsil and District Hoshiarpur, as per Jamabandi for the year 1995-96 is illegal, void and that the plaintiff is not bound by the same as the same has been executed and got sanctioned in absence and without consent of the plaintiff. D

ii. That the sale deed dated 03.07.1990 in respect of the land measuring 34 Kanals 5 Marlas Khasra Nos. 32-R/13/3 (2-12), 14 (8-0), 15/1 (4-16), 16 (2-10), 17 (3-11), 18/1 (1-9), 12//13/2 (0-9), 14/1 (0-9), 18/2/1 (2-19), 23 (5-3), 24/1/1 (5-9), 24/2/1 (1-2), 25/2/1(0-8), 12-R/15/2 (4-18), 16 (8-0), 17/1 (7-13), 18/1/1(2-8), 25/1/1 (5-16), 13//20 (8-0), 21 (8-0), 22 (8-0), 23/1 (4-12), 27/17/2 (0-19), 18/1 (1-10), 18/2 (0-19), 23/1 (5-10), 23/2 (1-12), 27/24/1 (1-14), 32//3/2 (5-13), 4/1 (1-3), 4/6 (0-2), 17//13 (less than one Marla), 18//3 (0-5), 4 (2-16), 5/1 (0-1), 17//1/1 (3-10), 2/1 (7-6), 3/1 (4-12), 8/2/1 (3-3), 9/1 (0-18), 24//6/2/1 (5-15), 7/1/2/1 (2-5), 14/2 (0-11), 15/1 (4-18), 25//8 (0-10), 9 (5-0), 10-2-1 (5-19), 11/1 (4-18), 12/2 (4-18), 13/1 (0-17), 13//11 (7-11), 12 (7-11), 13/1 (4-7), 13/18/2 (4-12), 19 (8-0), i.e. 1/6th share of 205 Kanals 9 Marlas situated in Village Mehandipur, H.B. No. 46, Tehsil Dasuya, District Hoshiarpur as per Jamabandi for the year 1983-84 and also as E F G

[5] for short, "the subsequent purchasers" H

per Jamabandi for the year 1994-95 is illegal, void without consideration and executed in absence of the plaintiff by producing other lady by the defendant no. 1 in collusion with defendant no. 11 and his wife and the plaintiff is not bound by the same and is owner in possession of the said land.

iii. That the sale deed in favour of defendant no. 7 dated 20.05.1996 registered on 22.05.1996 in respect of the land measuring 2 Kanal 10 Marlas out of land measuring 14 Kanals 18 Marlas bearing Khewat No. 107, Khatauni No. 148, Khasra No. 13//1 (6-18), 14-R/5 (8-0), now Khewat No. 123 and Khatauni No. 140 and the same khasra number as per Jamabandi for the year 1997-98 executed by defendant no. 11 situated in Village Sareenpur, H.B. No. 139, is illegal, void and without the consent of the plaintiff and the same is executed in the absence of plaintiff by playing fraud on the plaintiff and the plaintiff is owner of the said property.

iv. That the sale deed dated 18.03.1996 in favour of defendant no. 9 executed by defendant no. 11 in respect of plot bearing no. 373-R to the extent of 1/12 share in front of which there is a road behind house no. 378-Land other side 373-L owned by Mangat Singh and Avtar Singh and other side is H.No. 372-L owned by Mool Chand Bhandari situated in Model Town, Jalandhar, as per site plan attached with the plaint is illegal, void and without the consent of the plaintiff.

v. That the sale deed dated 18.03.1996 registered on 21.03.1996 in favour of defendant no. 10 executed by defendant no. 11 in respect of 1/12 share as Mukhtar by defendant no. 11 is illegal and void and without consideration and without the consent of the plaintiff, house bounded as:

Front : Road;

Behind : Property of H.No. 378-L;

One side present No. 372-L owned by Mool Chand Bhandari;

One side 373-L owned by Mangat Singh and Avtar Singh;

situated in Model Town, Jalandhar, shown red in the site plan attached.

IN THE ALTERNATIVE suit for joint possession of the properties as detailed in the heading (i) to (iii) and also declaring that the plaintiff and defendant no. 9 and 10 are in joint possession as co-sharers of the property Nos. (iv) and (v)."

12. Both the suits were resisted by defendant No. 1 and defendant Nos. 3 to 6. The subsequent purchasers also contested the suits by filing their written statement in C.S. No. 173/2002. On the basis of rival pleadings, the trial Court framed issues in the aforementioned suits as follows:

Issues in C.S. No. 11/2001-

"1. Whether the Plaintiff is entitled for a decree of declaration as prayed for? OPD

2. Whether the suit is not maintainable in the present form? OPD

3. Whether the suit is within limitation? OPP

4. Relief."

Issues in C.S. No. 173/2002-

"1. Whether the plaintiff is entitled to declaration as prayed for? OPP

2. Whether the sale deeds alleged by the plaintiff are null and void? OPP

3. Whether the plaintiff is entitled to joint possession as alternative relief as prayed for? OPP

4. Whether the suit of the plaintiff is not maintainable? OPD

5. Whether the suit of the plaintiff is barred by limitation? OPD

6. Relief."

13. The aforementioned suits came to be clubbed and evidence was recorded in the leading suit being C.S. No. 11/2001. After analyzing the evidence on record, the trial Court dismissed both the suits of the plaintiff vide a common judgment and decree dated 03.01.2009.

14. Aggrieved by this decision, the plaintiff preferred Civil Appeal Nos. 3 and 4 both of 2009 against C.S. No. 11/2001 and C.S. No. 173/2002 respectively before the Additional District Judge (Ad-hoc), Fast

A Track Court – I, Hoshiarpur[6]. During the pendency of the appeals, the plaintiff expired and since then came to be represented by her legal representative Nirmal Gill (respondent No. 1 herein). The first appellate Court once again appreciated the evidence on record and after elaborate analysis, whilst upholding the findings of the trial Court on material issues, vide its judgment and decree dated 30.11.2011, partly modified the decision
B of the trial Court in C.S. No. 11/2001. The first appellate Court was pleased to reverse the conclusion of the trial Court limited to subject land admeasuring 9 marlas on the finding that the jamabandi reflects plaintiff's name recorded as co-owner in possession of the said property. Finally, the first appellate Court concluded as under:

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> "48. In view of my above discussion the appeal is partly accepted to the extent that the appellant-plaintiff is owner in possession of land measuring 9 marlas out of the land measuring 4 Kanals 13 Mis. As fully detailed in the sub head note (ii) of the plaint. Therefore, the findings of the learned trial Court with regard to
> D this effect only are reversed and set aside. However, there is nothing on record calling interference of this court in the remaining findings arrived at by the Ld. Trial Court which are based on the correct appreciation of facts and evidence on the file. No order as to costs. Decree sheet be prepared. The learned lower court record be returned and appeal file be consigned to the record
> E room."

The first appellate Court vide another judgment of even date, however, upheld the judgment of the trial Court in reference to C.S. No. 172/2002 in toto.

F 15. Nirmal Gill (respondent No. 1) filed second appeals before the High Court being R.S.A. No. 2901/2012 and R.S.A. No. 3881/2012 against Civil Appeal No. 3/2009 and Civil Appeal No. 4/2009 respectively. While admitting the second appeal, the High Court formulated two questions as substantial questions of law. The same read thus:

> G "1. Whether the findings of the learned Courts below are sustainable in view of the fact that the question of fraud was apparent?
>
> 2. Whether the findings of the learned courts below are in accordance with the settled provisions of law and the questions

H [6] for short, "the first appellate Court"

of law and the question of fraud and limitation had been wrongly decided by the courts below?"

16. After reappreciating the factual matrix and the evidence on record, the High Court opined that the trial Court as well as the first appellate Court committed manifest error and misapplied the settled legal position. On this finding, the High Court went on to reverse the concurrent opinion of two Courts.

17. Being aggrieved, the defendant Nos. 1, 4 to 6 and the subsequent purchasers approached this Court by way of present appeals. The former set of appeals [arising out of SLP(C) Nos. 21326-21327/2019] had been preferred by defendant Nos. 1, 4 to 6 and the latter [arising out of SLP(C) Nos. 29775-29776/2019] by the subsequent purchasers.

18. According to the defendant Nos. 1, 4 to 6, interference by the High Court in the present matter was unwarranted as the same did not involve any substantial question of law. It was urged that judgments of the trial Court, as well as, the first appellate Court have been passed after proper appreciation of evidence, therefore, the High Court ought not to have interfered with the concurrent findings of facts – as re-appreciation of evidence is not permissible in second appeal. It was then argued that the plea of fraud was not taken in plaint in terms of Order 6 Rule 4 of the Civil Procedure Code[7] and thus, the same cannot be considered. On merits, the aforesaid defendants contended that the evidence of the plaintiff was self-contradictory, as she first claimed that her signatures were taken on blank papers and then denied her signatures occurring on the 1990 GPA. The plea that the signatures were taken on blank papers was not substantiated as the 1990 GPA was executed on stamp papers. Further, the High Court observed that there was no need of the 1990 GPA when the 1963 GPA was in existence, without noting that the 1963 GPA was jointly executed by all the legal heirs of Harbans Singh; while the 1990 GPA was exclusively executed by the plaintiff in reference to her share in the suit property. The High Court then noted that the defendant No. 1 did not lead evidence to avoid being cross examined whilst ignoring the fact that she was residing abroad at the relevant time. The signatures of the plaintiff as well as the attesting witness Teja Singh Lamberdar were examined by expert Arvind Sood (DW7) and he had opined that the same are genuine. As regards the

[7] For short, "the CPC"

A address of the plaintiff wrongly mentioned in the 1990 GPA as 775 instead of 875, it was argued that the plaintiff denied her address only to support her case. The defendant No. 4 had categorically deposed in his evidence that the plaintiff had been living at 775 from 1987 to 1995. Further, the plaintiff's witness - PW4 had read over the recitals of the 1990 GPA to the plaintiff, who appended her signatures upon being satisfied about its B correctness. The High Court exceeded its jurisdiction in observing that PW4 was not declared hostile due to reasons best known to plaintiff's counsel; and disregarding his evidence merely because he went to school with the defendant No. 4. The aforesaid defendants then urged that the payment of consideration received in lieu of sales made through the C attorney was duly passed on to the plaintiff. Regarding the aspect of payment of Rs.5 lakhs to son of the plaintiff, Charanjit Singh, the same was not raised before the trial Court. Further, if he had carried the said cash with him from Delhi to Punjab, then there was no reason why he could not carry it back. As regards rights of the subsequent purchasers, it was urged that there was no dispute till 2001 and therefore, the aforesaid D purchasers could not have doubted before purchasing.

19. The subsequent purchasers would submit that before purchasing the plot at Jalandhar, they duly verified the title deeds as also the correctness and genuineness of the 1990 GPA. The 1990 GPA is a registered document and enquiries were made by verifying the same in E the Sub-Registrar's office and only after being satisfied, the said plot was purchased bonafide for consideration.

20. The argument put forth by Nirmal Gill (respondent No. 1 - plaintiff) was that the High Court had rightly reversed the decisions of the trial Court and the first appellate Court, which were contrary to F evidence brought on record and against the settled principles of law. It was submitted that after the death of Harbans Singh, defendant Nos. 3 and 4 were taking up the cultivation of the joint land with permission of the plaintiff, which shows that they enjoyed active confidence of the plaintiff. It was submitted that the plaintiff had never executed any GPA G or sale deed in favour of the defendants. It was urged that the 1990 GPA was laden with many discrepancies which prove it being a product of fraud and forgery. The address of the plaintiff had wrongly been mentioned as 775 instead of 875 in the 1990 GPA as well as in the stamp vendor's record. Further, the scribe (PW4) who claimed to have prepared it on the instructions of the plaintiff had failed to identify the plaintiff. H

Moreover, the PW4 was admittedly known to the defendant No. 4 since their school days. There appeared to be an alteration to the date of execution of the 1990 GPA and the serial number of the stamp paper, which showed that the same was done to suit the defendants. In regard to the documents registered on 29.06.1990, it was submitted that PW4 in his register had entered the 1990 GPA at Serial No. 390 after entering sale deed at Serial No. 388 and Special Power of Attorney in favour of defendant No. 1 at Serial No. 389, which defies reason that plaintiff first sold land to the defendant Nos. 3 and 4 and then executed GPA in respect of the said land in favour of defendant No. 1.

21. It was then contended that the attesting witnesses were defendants' men and were not known to the plaintiff. The reason for execution of the 1990 GPA stated in its recitals was that the plaintiff was unable to look after the properties being a woman and then it was in turn executed in favour of another woman, defendant No. 1. The plaintiff's photograph and thumb impression were also not affixed on the GPA and the same appears to have been registered by impersonating plaintiff. The handwriting expert Jassy Anand (PW10) had opined that the signatures were a result of copied forgery. With regard to the sale deeds, it was urged that the proof that the sale deeds were fabricated is that the consideration of the alleged sales had never been passed on to the plaintiff. It was pointed out that the defendants had mortgaged the joint lands several times without plaintiff's consent as they were in need of money, to highlight the fact that they did not possess the means to purchase the lands for consideration. It was submitted that the defendants attempted to show that the consideration was paid out of proceeds received by sale of their mother's property, however there was no evidence on record as to existence of any such property. Moreover, the attesting witness of the sale deeds could not identify the plaintiff. Similarly, the subsequent purchasers also could not identify the plaintiff. They had also failed to showcase that attempts were made in order to ascertain the genuineness of the 1990 GPA or to contact the plaintiff. The consideration of her step brothers/defendants was paid in their own names while the share of consideration of plaintiff was paid in the name of defendant No. 1. The defendant No. 4 also tried to pass off Charanjit Singh's money returned to him as sale consideration received by him on behalf of the plaintiff in respect of sales executed by defendant No. 1. Further, it was submitted that the Special Power of Attorney dated 29.06.1990 could not be challenged as the same was not available in the Sub-Registrar's office

A and was not produced by the defendants on record. The 1963 GPA could not be challenged, being a document more than thirty years old. The plaintiff and the defendant Nos. 3 to 6 were on cordial terms and hence they were in a fiduciary relationship with the plaintiff, therefore, the burden of proving that there was no presence of any fraud would lie on the defendants, which they failed to discharge.

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22. We have heard Mr. T.S. Doabia, learned Senior counsel and Mr. Jagjit Singh Chhabra, learned counsel for defendant Nos. 1 and 3 to 6, Mr. Subhashish Bhowmik, learned counsel for the subsequent purchasers and Nirmal Gill, who appeared in person, as the legal representative of the plaintiff.

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23. The questions that arise for our consideration in the present appeals are:

1. Whether the suits filed by the plaintiff were within limitation?

2. Whether the 1990 GPA and sale deeds dated 29.06.1990 and 03.07.1990 purported to have been executed by the plaintiff is a result of fraud and forgery or whether the same had been executed by the plaintiff herself?

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24. Before venturing into the question of limitation, we deem it appropriate to examine the issue of fraud and its knowledge, which will go to the root of the case.

E

I. FRAUD

25. The fraud in the present *lis* is allegedly committed in respect of the 1990 GPA executed on 28.06.1990 and registered on 29.06.1990, and the Sale deeds executed and registered on 29.06.1990 and on 03.07.1990 respectively. We may examine the findings in respect of these documents separately.

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Fraud in respect of the 1990 GPA and sale deed dated 29.06.1990

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26. The plaintiff had pleaded that defendant No. 3 had come to Delhi to call her to village for the purpose of mutation of their father's estate and accordingly, she had visited the village whereat the defendants obtained her signatures on blank papers on the pretext of preparing documents for mutation. When she learnt about the existence of the 1990 GPA and the sale deed, she verily believed that the said blank

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papers had been misused. However, upon production of the original GPA by the defendants during trial, she claimed that the said document is not scribed upon the blank signed papers and was instead a product of forgery and that the registration was done by impersonation.

27. In order to prove that the 1990 GPA was not executed by her, the plaintiff pointed out the discrepancies with respect to the address and alteration of the date of execution. Further, it was contended that if the reason for execution was that plaintiff is a woman, it defied logic to execute the same in favour of another woman. Reliance was placed on the testimony of the scribe (PW4), wherein he had stated that he would enter the documents in his register in order of execution, whereas the 1990 GPA which was allegedly executed on 28.09.1990 but had been entered in his register after the sale deed of 29.09.1990. The plaintiff also claimed that the attesting witnesses were not known to her.

28. Per contra, the defendants relying upon the testimony of the scribe (plaintiff's witness - PW4), would urge that he (PW4) had prepared the aforesaid documents as per the instructions of the plaintiff. The defendants got the admitted signatures of Teja Singh Lamberdar, one of the attesting witnesses of the aforesaid documents, compared by the handwriting expert (DW7) and relied upon his opinion. The defendants had further relied upon the testimonies of Kultar Singh (DW2) and Avtar Singh (DW4), who identified the signatures of Teja Singh Lamberdar.

29. The trial Court while dealing with the aforesaid issue had found that the plaintiff was present in the village at the time of execution of the 1990 GPA and the sale deed dated 29.06.1990. Further, the stated documents scribed on the stamp papers purchased in name of the plaintiff, bear her signatures and endorsements made by the Sub-Registrar, evidencing its registration. Therefore, it was for the plaintiff to bring on record facts and circumstances under which fraud had been played. It was observed that had the plaintiff signed on blank papers for mutation, she would have enquired regarding the status thereof. The trial Court also noted that the signatures of the attesting witnesses were identified and proved. The trial Court then analysed the testimony of the scribe (PW4) that he had prepared the documents upon instructions of the plaintiff and read them over to her, and the plaintiff after admitting correctness of the documents had appended her signatures. The trial Court went on to observe that the scribe was plaintiff's own witness and had not been declared hostile. Further, the plaintiff made no attempt

A to seek explanation from her witness (PW4) as to the sequence of the entries in his register and also as to the discrepancies in the 1990 GPA, in absence whereof, the testimony of PW4 militated against the plaintiff. The trial Court then noted that the signature of Teja Singh was proved to be genuine by DW2, DW4 and DW7 and thus concluded that the 1990 GPA and the sale deed stood proved. The relevant extracts of the judgment of the trial Court are reproduced below:

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> "48. Further, in my opinion, if as per the plaintiff, she gave her signatures on blank papers in the year 1990 for the purposes of sanctioning of mutation of inheritance, then whether she asked from her step brothers about those proceedings afterwards. Plaintiff is an educated lady. She knows the things very well. There is no such thing on the file that after giving her signatures on blank papers as alleged by her, she ever made any effort to ask her step brothers about those mutation proceedings. It does not appeal to reason that plaintiff would remain mum for such long period and would not ask anything about those proceedings from the defendants till as per the contention of the plaintiff, she came to know about the execution of power of attorney in the year 2001 in some family function.
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> xxx xxx xxx
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> 51. ... The original power of attorney was put to Joginder Kaur during her cross-examination but she stated that it does not bear her signatures anywhere and she also replied that she need not see the original for this purpose because her signatures were obtained on blank papers at the instance of some person who said he would made said writing on it.
>
> 52. Here at this juncture I would like to make reference of statement of PW4 Balkar Singh because his reference would clinch the matter in controversy. PW-4 Balkar Singh is a deed writer at Tehsil Complex Dasuya. This witness in his examination in chief stated that he personally knows Joginder Kaur plaintiff and Rattan Singh. ...
>
> 53. The cross-examination of this witness is also relevant to be discussed. In his cross-examination, he has categorically stated that he scribed the document as the instance of Joginder Kaur, after scribing the power of attorney at his seat, he read over it to

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the parties, and then parties after admitting it to be correct put their signatures in the presence of the attesting witnesses. He categorically stated that Joginder Kaur plaintiff in his presence put her signatures in English. ...

xxx xxx xxx

64. Further the Learned Counsel for the plaintiff raised the point that when the plaintiff had not admitted the execution of power of attorney dated 28.06.1990 registered on 29.06.1990, then the defendant was required to examine the attesting witnesses of this document and in case of failure of non-examining of any of the attesting witnesses, the adverse inference should be taken against the defendants. Then at this juncture the Learned Defence Counsel raised the point that original attorney dated 28.06.90 was witnessed by Teja Singh Lambardar and Gurcharan Singh son of Gian Singh resident of Village Ludiani. He raised the point that Teja Singh Lambardar had since died. The defendant examined DW.2 Kultar Singh who deposed to this effect that the sale deed dated 25.01.1984 Ex. DW3/A was executed and Teja Singh Lambardar was one of the attesting witness of the same. Similarly, Kultar Singh DW.2 who was one of the executants of the sale deed Ex. DW3/A has identified his signature as well as signatures of Teja Singh Lambardar on the sale deed dated Ex. DW3/A and DW.4 Avatar Singh had identified the signatures of Teja Singh Lambardar on the sale deed dated 24.12.1981 Ex. DW2/A in Urdu script. DW.5 Gurdial Singh deposed that he purchased the land measuring 15 Kanals 7 Marlas from Teja Singh son of Bhag Singh and that Teja Singh vendor was Lambardar of Village Kalyanpur and he identified his signatures on the sale deed dated 15.06.1983 Ex. D5 and he further raised the point that DW.7 Arvind Sood the Hand writing Expert of the defendants got compared the signatures of Teja Singh appearing on the power of attorney dated 28.06.1990 with these signatures appearing on the above referred documents and in his report Ex. DW7/A stated that the questioned signatures as well as the disputed signatures are of one of the same person..."

30. The first appellate Court concurred with the trial Court's findings and had held that a bare perusal of the evidence reveals that the 1990 GPA was executed by the plaintiff. Further, the haphazard entries made

A by the scribe will be of no avail, much less it would not disprove the registered documents. Further, the defendants cannot be burdened with the actions of the scribe, who was the plaintiff's witness.

31. While reversing the findings of the trial Court and the first appellate Court, the High Court had observed that if the plaintiff could B be available for execution of the sale deeds, it is unfathomable that the plaintiff would have ever executed the GPA. It further held that the testimony of PW4 cannot be believed as he was known to defendant No. 4 since his school days. It was observed that the 1990 GPA appears to have been executed by fraud, in the following words:

C "In the present case, it is relevant to note that the General Power of Attorney dated 28.06.1990 contains a recital that it is being executed by the plaintiff as she is unable to look after the affairs regarding the land being a woman. In such a situation, it is opposed to all probabilities and common sense that the General Power of Attorney would have been executed in favour of another woman D Harcharan Kaur, who is none other but the wife of Rattan Singh, the step brother of the plaintiff. In case, the power of attorney had to be executed, it would have been in favour of the brother himself. It is not difficult to appreciate that the plaintiff - Joginder Kaur being the child of Harbans Singh from his first marriage E would have looked to her four step brothers being her parental family. It is natural that she would always look to them to keep alive that link to her father through her step brothers, especially as she was treated with love and affection, obviously showered upon her by them for considerations, which are apparent from the record. This is particularly understandable keeping in view the F societal norms and values especially prevalent at that time. The defendants have admitted that the plaintiff maintained contact with her step brothers and would often visit and stay with them. The fraudulent intention and dishonest plan of the said defendants is apparent and can easily be inferred from the evidence on record.

G At this stage, it is necessary to make a mention of another General Power of Attorney 08.10.1963, purportedly executed by the plaintiff in favour of her brother Gurdial Singh. In case, such power of attorney by the plaintiff alongwith others, already stood executed, there was no requirement whatsoever for having executed another H power of attorney in the year 1990. Address of plaintiff - Joginder

Kaur was wrongly mentioned in the power of attorney as 775, Vikas Kunj/Vikas Puri, Delhi whereas there is no palpable reason for having mentioned an incorrect address in the power of attorney. There is merit in the argument that a fictitious address was deliberately inserted so that a third person may not be able to even contact the plaintiff.

Furthermore, reliance by the learned courts below on the testimony of Balkar Singh PW 4, to accept the veracity of the General Power of Attorney and two of the sale deeds is clearly misplaced. This is so for the reason that it is a matter of record that PW 4 Balkar Singh was well known to the defendant Rattan Singh. PW 4 has testified that he knew Rattan Singh since school. Sequence of the entries in the register of PW 4, do raise a suspicion regarding the execution of the documents in question. PW 4 has testified that whenever he scribes a document, he carries out the necessary entry in his register and the documents are entered in the order in which he scribes them. It is a matter of record that the entry regarding sale deed dated 29.06.1990 is scribed at serial No. 388 i.e. prior to the entry at No. 390 in respect to the General Power of Attorney claimed to have been scribed on 28.06.1990. There is another special power of attorney purported to be executed by the plaintiff in favour of Harcharan Kaur wife of Rattan Singh. There is a cutting in date on the power of attorney insofar as the date '28' is concerned. ... The said witness was not declared hostile as per the appellant due to reasons best known to their counsel.

... In case, the plaintiff could be available for execution of the said sale deeds, it does not stand to reason, as to why she would have ever executed the General Power of Attorney in favour of Harcharan Kaur. Vide the said sale deeds, land in question was transferred to her step brothers Gurdial Singh and Rattan Singh.

.....

… The attesting witnesses of the sale deed dated 29.06.1990 were not examined. It bears reiteration that the above said facts have been discussed only to bring out the fraud perpetuated on the plaintiff - Joginder Kaur. …"

A 32. 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.***[8].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."
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> (emphasis supplied)

In view thereof, in the present cases, the initial onus was on the plaintiff, who had challenged the stated registered document.

D 33. Be that as it may, before examining whether the plaintiff discharged that onus and thus shifted it on the defendants, we may take note of procedure prescribed for proof of execution of document. In this regard, we refer to Section 68 of the Indian Evidence Act, 1872[9]. The same is reproduced hereunder:

> E "68.- **Proof of execution of document required by law to be attested**. - If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:
>
> F **Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document**,not being a will, **which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.**"
>
> G (emphasis supplied)

[8] (2006) 5 SCC 353

H [9] For short, "the 1872 Act"

34. As the execution of the 1990 GPA and the sale deeds in the present cases is denied by the plaintiff, it became necessary for the plaintiff to examine the attesting witnesses of the disputed documents to establish her allegation about its non-execution. For, the documents had been registered on 29.06.1990 and came to be attested by Teja Singh Lamberdar and Gurcharan Singh. However, both the attesting witnesses were not examined. Indeed, Teja Singh had since died but there is nothing on record regarding availability of Gurcharan Singh. Thus, we must now advert to Section 69 of the 1872 Act which provides for proof when no attesting witness is found. The same is extracted below:

> "69.- **Proof where no attesting witness found**.- If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the hand writing of that person."

35. The fact that the subject documents were executed by plaintiff and attested by Teja Singh has been established from record in the shape of evidence of PW4 as well as defendant No. 4. The signatures of Teja Singh were identified by DW2, who deposed that he was conversant with Urdu language and could identify the signature of Teja Singh, which was in Urdu language. Further, DW4 deposed that he used to pay land revenue to Teja Singh and received receipts from him. Moreover, the handwriting expert (DW7) had also compared the admitted signatures of Teja Singh with those on the disputed documents and opined that it was signed by him, while the expert produced by the plaintiff as PW10 had not examined the admitted signatures of Teja Singh. Therefore, the signatures of Teja Singh stood proved as per the opinion of expert (DW7) and stood corroborated by DW2 and DW4, independent witnesses.

36. We may now usefully advert to Section 71 of the said Act, which reads:

> "71.- **Proof when attesting witness denies the execution**.- If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence."

37. Here, the evidence of plaintiff's witness-PW4 comes to aid of the defendants as the same unveils that the stated documents were

A prepared on the basis of instructions of the plaintiff and had been duly executed by her in the presence of the attesting witnesses.

38. At this stage, it may be noted that the trial Court and the first appellate Court had relied upon the evidence of PW4. The High Court, however, proceeded on surmises and conjectures and took a view which B is perverse and tenuous. In that, the ground on which the High Court rejected the evidence of PW4 is that he was known to the defendant No. 4 since his school days. We do not find it to be a correct approach to disregard the credible testimony of the witness examined by the plaintiff herself (without declaring him as a hostile witness) and especially when it had come on record that the said scribe is a regular deed writer at the C Tehsil complex, Dasuya. Notably, PW4 had not been declared hostile at the instance of the plaintiff and as such, this part of his testimony would be staring at the plaintiff.

39. The plaintiff had then contended that the burden of proving that there is no involvement of fraud would be on the defendants as they D enjoyed active confidence of the plaintiff. To establish the presence of active confidence, the plaintiff relied upon the testimony of DW2 and DW4 whilst pointing out that the defendants were cultivating the joint lands. The plaintiff also contended that the same was with her permission. The fact that she was on visiting terms with the defendants also shows E the existence of trust and hunky-dory between the parties.

40. 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. F 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.

41. The High Court, however, went on to observe that defendants G had abused their position of active confidence, in the following words:

> "…..
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> The entire exercise indeed smacks of connivance, misrepresentation and fraud. This Court would be failing in its duty, if the necessary inference is not drawn from the evidence H on record. Present is a clear-cut case of an unsuspecting sister

being defrauded by her own step brothers/bhabi in whom she had reposed implicit trust. It is a clear case of misuse and abuse of the position of confidence held by the step brothers of the plaintiff. …"

The requirement regarding shifting of burden onto the defendants had been succinctly discussed in ***Anil Rishi v. Gurbaksh Singh***[10],wherein this Court had held that for shifting the burden of proof, it would require more than merely pleading that the relationship is a fiduciary one and it must be proved by producing tangible evidence. The relevant extract of the said decision is reproduced as thus:

"8. The initial burden of proof would be on the plaintiff in view of Section 101 of the Evidence Act, which reads as under:

"101. *Burden of proof.*—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.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."

9. In terms of the said provision, the burden of proving the fact rests on the party who substantially asserts the affirmative issues and not the party who denies it. The said rule may not be universal in its application and there may be an exception thereto. The learned trial court and the High Court proceeded on the basis that the defendant was in a dominating position and there had been a fiduciary relationship between the parties. The appellant in his written statement denied and disputed the said averments made in the plaint.

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

[10] (2006) 5 SCC 558

A 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.

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14. But before such a finding is arrived at, the averments as regards alleged fiduciary relationship must be established before a presumption of undue influence against a person in position of active confidence is drawn. The factum of active confidence should also be established.

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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.

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16. Thus, point for determination of binding interests or which are the cases which come within the rule of active confidence would vary from case to case. If the plaintiff fails to prove the existence of the fiduciary relationship or the position of active confidence held by the defendant-appellant, the burden would lie on him as he had alleged fraud. The trial court and the High Court, therefore, in our opinion, cannot be said to be correct in holding that without anything further, the burden of proof would be on the defendant."

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(emphasis supplied)

F 42. Let us now examine if the above requirement is satisfied in the fact situation of the present case and if the defendants enjoyed active confidence of the plaintiff. It is an admitted position that the plaintiff and defendants always had cordial relationship and the plaintiff was on visiting terms. Further, the fact that the defendant Nos. 3 and 4 were cultivating the joint lands is also not disputed. The defendant Nos. 3 and 4 were G cultivating the lands along with their father Harbans Singh and continued to do so even after his death. The principle underlying the reported decision must come to the aid of defendants as the plaintiff had failed to prove the fact of misuse of trust by the defendants as such.

43. Further, the plaintiff attempted to project the 1990 GPA as a H doubtful document stating that the same had discrepancies with respect

to the address and the alteration of the date of execution. In absence of the attesting witness and in view of the evidence of PW4 scribe, it was for the plaintiff to get PW4 declared hostile and cross examine him in order to prove that he had deposed falsely, which the plaintiff had failed to do.

44. Emphasis was laid on the entries made in the PW4 scribe's register showing the 1990 GPA to have been executed prior to the sale deed and it was submitted that there is no logic in first giving GPA and then executing sale deed if the plaintiff was available to execute the aforesaid documents. However, the same is of no avail to the plaintiff as the 1990 GPA was in respect of all her land holdings, whereas the sale was made only in respect of land situate at Kalyanpur village.

45. The other reason weighed with the High Court that 1990 GPA was allegedly executed by the plaintiff as she being a woman is also of no consequence as the words 'being a lady' were preceded by 'I am old and weak'. Thus, the primary reason for executing the 1990 GPA was that the plaintiff was not residing in Punjab at the relevant point of time and that she was old and weak, and thus unable to look after her property situate at Punjab. The stress laid upon the fact that a woman was appointed in her place is, therefore, a matter of surmises and conjectures.

46. Suffice it to observe that the contention that the registration of the 1990 GPA as well as the sale deeds, had been effected by impersonating the plaintiff has not been proved. No credible and tangible evidence has been led in that regard. It is merely a bald plea set up by the plaintiff.

47. The plaintiff's denial of being acquainted with the attesting witnesses, is, also a ruse and not genuine. For, one of the attesting witnesses Teja Singh was a lamberdar of the village. A lamberdar's job is to collect revenue in respect of the lands and issue receipts and as a practice, the lamberdar is called for attesting documents. Thus, when the plaintiff admittedly used to visit village frequently, her denial in knowing Teja Singh is far-fetched. This is what two Courts had opined and being a possible view, no interference by the High Court was warranted in that regard. That is beyond the scope of second appeal, as held by this Court in ***Satya Gupta (Smt.) alias Madhu Gupta v. Brijesh Kumar***[11]. The relevant paragraph of the said decision is extracted hereunder:

[11] (1998) 6 SCC 423

A "16. At the outset, we would like to point out that the findings on facts by the lower appellate court as a final court of facts, are based on appreciation of evidence and the same cannot be treated as perverse or based on no evidence. That being the position, we are of the view that the High Court, after reappreciating the evidence and without finding that the conclusions reached by the B lower appellate court were not based on the evidence, reversed the conclusions on facts on the ground that the view taken by it was also a possible view on the facts. The High Court, it is well settled, while exercising jurisdiction under Section 100 CPC, cannot reverse the findings of the lower appellate court on facts merely C on the ground that on the facts found by the lower appellate court another view was possible."

Fraud in respect of sale deed dated 03.07.1990

48. Even with regard to the sale deed dated 03.07.1990, the plaintiff had asserted that the same was not executed by her. It was then contended D that the sale consideration had not been passed on to her which makes it evident that the sale deed was never executed by her. The plaintiff relied upon the testimony of defendant No. 4, wherein he had stated that the defendants needed money and had taken loans on the joint lands, to prove that the defendants did not possess means to pay the sale E consideration. Further, it was contended that the testimony of attesting witness, Anoop Singh (DW3) cannot be considered as he failed to identify the plaintiff.

49. In contrast, the defendants had claimed that the sale consideration had been duly paid out of the sale proceeds received by F selling another land belonging to their mother. The defendants placed reliance on the testimonies of the scribe (PW4) and DW3.

50. The trial Court analysed the testimony of DW3 and noted that he had clearly stated the plaintiff was known to him personally. He had deposed that sale deed was executed by the plaintiff in his presence and G the same was for a sum of Rs. 86,000/-. It was further held that though the witness failed to identify the photographs of the plaintiff, adverse inference cannot be drawn as the sale deed was executed in the year 1990 whereas the evidence was given in the year 2007.

51. The first appellate Court also agreed with the view taken by H the trial Court whilst observing that the plaintiff would not have executed the sale deed had she not received the sale consideration.

52. The High Court yet again deviated from the approach of the trial Court and the first appellate Court and held that testimony of DW3 was of no avail to the defendants to prove the said sale deed. Because, he had no clue regarding passing of consideration to the plaintiff. Further, the defendants had failed to prove the fact of handing over consideration amount to the plaintiff. Also, defendant No. 4 and DW3 denied each other's presence. The relevant portion of the High Court's judgment reads as under:

> ".....
>
> … Testimony of DW 3 Anoop Singh, who is one of the attesting witnesses of the sale deed dated 03.07.1990, is extremely telling of the facts of the case. DW 3 though stated that the sale deed in question was read over to Joginder Kaur in his presence and in the presence of other witness Teja Singh, Lambardar, could not even identify the plaintiff. Therefore, it is apparent that his testimony is not useful to the defendants for proving sale deed dated 03.07.1990. He did not have a clue regarding the passing of consideration in this case. DW 6 Rattan Singh has asserted that Gurcharan Singh of Ludhiana was present. DW 3 and DW 6 have denied each others presence at the time of execution of the sale deed. …"

53. Before analysing the evidence of DW3, it may be noted that since the sale deed requires attestation by two witnesses, as discussed above, the same has to be proved as per procedure laid down under Section 68 of the 1872 Act.

54. The sale deed of 03.07.1990 had been attested by Teja Singh Lamberdar and Anoop Singh (DW3). The attesting witness (DW3) was examined and he had deposed that the said sale deed was executed by the plaintiff in his presence, as well as in presence of Teja Singh and defendant No. 3. He had denied presence of any other person. He stated that the sale consideration was paid at home directly and not in his presence. Indeed, he had failed to identify plaintiff in photographs.

55. We may here refer to a decision of this Court in ***Damodar v. State of Rajasthan***[12],wherein it has been held that a hypersensitive approach ought not be taken in cases where there has been a delay in

[12] (2004) 12 SCC 336

A recording evidence. The relevant portion of the decision is extracted below:

> "7. In order to consider the correctness of conclusions arrived at by the two courts below, it has to be seen whether evidence of PW 15 has been rightly accepted to be truthful and reliable. So
B far as PW 15 is concerned, it has to be noted that at the time of occurrence he was about 13 years of age and was a student. **The incident is of October 1990. PW 15 was examined in August 1997 i.e. nearly after seven years. It cannot be lost sight of that long passage of time sometimes erases the**
C **memory and minute details are lost sight of. In this background, it has been stated that if a case is proved perfectly it is argued that it is artificial. If a case has some flaws inevitably because human beings are prone to err, it is argued that it is too imperfect. While, therefore, assessing the evidence one has to keep realities in view and not adopt**
D **a hypersensitive approach.** The so-called discrepancies pointed out by the learned counsel for the appellants like the vehicle from which the witness saw the approaching bus or with which part of the offending vehicle the cycle was hit are too trifle to affect the credibility of PW 15's evidence. Filtering out these minor discrepancies, cream of the evidence remains on which the
E credibility of the evidence lies. That being so, the conclusions arrived at by the two courts below on evaluation of evidence do not need any interference."

(emphasis supplied)

F In the present cases, the disputed documents were executed in the year 1990 and the evidence of DW3 was recorded in the year 2007, after a passage of 17 long years. Thus, as discussed in the preceding paragraphs, the High Court erroneously doubted the evidence of DW3 merely because he could not identify photographs of plaintiff and because the defendant No. 4 and DW3 did not mention each other's presence at
G the time of execution.

56. Be that as it may, with reference to the said sale deed, the defendant No. 4 deposed that he was present at the time of execution of the sale deed on 03.07.1990 which was executed by the plaintiff in favour of defendants No. 3 and himself. He stated that Teja Singh and
H Gurcharan Singh were also present.

57. To examine the correctness of opinion of the High Court in disregarding the testimony of DW3 (on the ground that he could not identify the plaintiff and that the defendant No. 4 and DW3 denied each other's presence), we may refer to the definition of 'attested' under Section 3 of the Transfer of Property Act, 1882 which is reproduced below:

> "3.- **Interpretation Clause.-** In this Act, unless there is something repugnant in the subject or context,-
>
> …
>
> **"attested", in relation to aninstrument, means and shall be deemed always to have meant attested by two or more witnesses each of whom has seen the executant sign or affix his mark to the instrument**, or has seen some other person sign the instrument in the presence and by the direction of the executant, or has received from the executant a personal acknowledgement of his signature or mark, or of the signature of such other person, **and each of whom has signed the instrument in the presence of the executant**; but it shall not be necessary that more than one of such witnesses shall have been present at the same time, and no particular form of attestation shall be necessary."
>
> (emphasis supplied)

58. The disputed sale deed dated 03.07.1990 was signed by plaintiff as vendor and defendant No. 3 as vendee and in the presence of DW3 and the other attesting witness Teja Singh. DW3 as an attesting witness had seen both plaintiff and defendant No. 3 signing the deed and he then attested the sale deed. The High Court also failed to note that the other attesting witness being dead and his signature having been identified by DW2 and DW4, and with the testimony of PW4 scribe, the evidence of the DW3 witness stood corroborated and therefore, the same could not be disregarded.

59. In ***Jagdish Chand Sharma v. Narain Singh Saini (dead) through legal representatives & Ors.***[13], this Court held as under:

> "57.1. **Viewed in premise, Section 71 of the 1872 Act has to be necessarily accorded a strict interpretation. The two**

[13] (2015) 8 SCC 615

A **contingencies permitting the play of this provision, namely, denial or failure to recollect the execution by the attesting witness produced, thus a fortiori has to be extended a meaning to ensure that the limited liberty granted by Section 71 of the 1872 Act does not in any manner efface or emasculate the essence and efficacy of Section 63 of the**
B **Act and Section 68 of the 1872 Act.** The distinction between failure on the part of an attesting witness to prove the execution and attestation of a will and his or her denial of the said event or failure to recollect the same, has to be essentially maintained. Any unwarranted indulgence, permitting extra liberal flexibility to
C these two stipulations, would render the predication of Section 63 of the Act and Section 68 of the 1872 Act, otiose. **The propounder can be initiated to the benefit of Section 71 of the 1872 Act only if the attesting witness/witnesses, who is/are alive and is/are produced and in clear terms either**
D **denies/deny the execution of the document or cannot recollect the said incident.** Not only, this witness/witnesses has/have to be credible and impartial, the evidence adduced ought to demonstrate unhesitant denial of the execution of the document or authenticate real forgetfulness of such fact. If the testimony evinces a casual account of the execution and attestation of the
E document disregardful of truth, and thereby fails to prove these two essentials as per law, the propounder cannot be permitted to adduce other evidence under cover of Section 71 of the 1872 Act. Such a sanction would not only be incompatible with the scheme of Section 63 of the Act read with Section 68 of the 1872
F Act but also would be extinctive of the paramountcy and sacrosanctity thereof, a consequence, not legislatively intended. **If the evidence of the witnesses produced by the propounder is inherently worthless and lacking in credibility, Section 71 of the 1872 Act cannot be invoked to bail him (the propounder) out of the situation to facilitate a roving**
G **pursuit.** In absence of any touch of truthfulness and genuineness in the overall approach, this provision, which is not a substitute of Section 63(*c*) of the Act and Section 68 of the 1872 Act, cannot be invoked to supplement such failed speculative endeavour."

(emphasis supplied)

H

60. It is noteworthy that defendant No. 4 had not signed the sale deed despite being a vendee. In ***Aloka Bose v. Parmatma Devi and Ors.***[14], it has been held that signature of the vendee is not mandatory in a sale deed. The relevant portion of the said decision is extracted hereunder:

> "18. In any agreement of sale, the terms are always negotiated and thereafter reduced in the form of an agreement of sale and signed by both parties or the vendor alone (unless it is by a series of offers and counter-offers by letters or other modes of recognised communication). In India, an agreement of sale signed by the vendor alone and delivered to the purchaser, and accepted by the purchaser, has always been considered to be a valid contract. In the event of breach by the vendor, it can be specifically enforced by the purchaser. There is, however, no practice of purchaser alone signing an agreement of sale.
>
> 19. The defendant next contended that the agreement of sale in this case (Ext. 2) was clearly in a form which required signatures of both the vendor and purchaser. It is pointed out that the agreement begins as: "Agreement for sale between Kanika Bose and Parmatma Devi" and not an "Agreement of sale executed by Kanika Bose in favour of Parmatma Devi". Our attention is also drawn to the testimonium clause (the provision at the end of the instrument stating when and by whom it was signed) of the agreement, which reads thus:
>
> > "In witnesses whereof, the parties hereto have hereunto set and subscribed their respective hands and seals on these presents."
>
> It is therefore contended that the agreement specifically contemplated execution by both parties; and as it was not so executed, it was incomplete and unenforceable.
>
> 20. We have carefully examined the agreement (Ext. 2), a photocopy of which is produced. The testimonium portion in the agreement is in an archaic form which has lost its meaning. Parties no longer "subscribe their respective hands and seals". It is true that the format obviously contemplates signature by both parties. But it is clear that the intention of the parties was that it should be

[14] (2009) 2 SCC 582

A complete on signature by only the vendor. This is evident from the fact that the document is signed by the vendor and duly witnessed by four witnesses and was delivered to the purchaser. Apart from a separate endorsement made on the date of the agreement itself (7-9-1979) by the vendor acknowledging the receipt of Rs 2001 as advance, it also contains a second endorsement (which is also duly witnessed) made on 10-10-1979 by the vendor, acknowledging the receipt of a further sum of Rs 2000 and confirming that the total earnest money received was Rs 4001. This shows that the purchaser accepted and acted in terms of the agreement which was signed, witnessed and delivered to her as a complete instrument and that she then obtained an endorsement thereon by the vendor, in regard to second payment. If the agreement was not complete, the vendor would not have received a further amount and endorsed an acknowledgment thereon on 10-10-1979.

21. Apart from the above, the evidence of the witnesses also shows that there was a concluded contract. Therefore, even though the draftsman who prepared the agreement might have used a format intended for execution by both vendor and purchaser, the manner in which the parties had proceeded, clearly demonstrated that it was intended to be executed only by the vendor alone.

22. Thus we hold that the agreement of sale (Ext. 2) signed only by the vendor was valid and enforceable by the purchaser."

(emphasis supplied)

61. Since the defendant No. 4 has not signed the sale deed as a vendee, his evidence cannot be discarded. In any case, the weight of evidence of DW3 remains unassailable. Therefore, the testimony of DW3 satisfies the requirements of the conditions required for a valid attestation.

62. The plaintiff also asserted that she had not received the consideration in relation to the stated transactions and that the defendants had no means to pay the consideration. It has come on record that the defendants had mortgaged the joint lands several times as they were in need of money. Further, the defendant No. 4 after admitting to have mortgaged the land had said that he used that money to install tubewells

and buy tractors. The said fact does not conclusively prove that they did not possess funds as the said loans were obtained to make investments on the joint lands and not on the personal property of the defendant No. 4. Further, the defendant No. 4 had deposed that the sale consideration was paid from the sale proceeds received by selling the land of their mother in the village Ashrafpur. Since the attesting witness had proved the execution of the sale deeds, the primary onus upon the plaintiff had not shifted unto the defendants. Further, the plaintiff was obliged to rebut the positive evidence produced by the defendants regarding payment of consideration amount to the plaintiff; but also ought to have independently proved her case of non-receipt of the consideration amount.

63. A priori, we hold that the diverse grounds urged by the plaintiff in disputing the 1990 GPA and the sale deeds dated 29.06.1990 and 03.07.1990 are, as observed hitherto, unsubstantiated and untenable.

Expert Opinion

64. The plaintiff got her admitted signatures compared with the signatures on the disputed documents by a handwriting expert, Jassy Anand (PW10) who had come to a conclusion that the disputed signatures were a result of copied forgery. On the contrary, the defendants had also got the same document examined by their expert, Arvind Sood (DW7), who had determined the disputed signatures to have been signed by plaintiff herself.

65. The trial Court and the first appellate Court had not considered the contrary opinions of the experts and chose to form their opinion based on other evidence that has come on record. In our opinion, the expert evidence produced by the plaintiff in reference to the signature of the plaintiff is of no avail, in view of divergent opinions. The ground that the documents were a result of copied forgery cannot be substantiated only on the basis of the opinion of expert (PW10). Even otherwise, the expert opinions are not a binding piece of evidence and have to be corroborated with other pieces of evidence. Suffice it to say that the plaintiff failed to prove that her signatures on the subject documents are forged.

1963 GPA not challenged

66. Further, the 1963 GPA is claimed to have been discovered during the enquiries made by the plaintiff subsequent to attaining

A knowledge of the fraud. However, the said GPA was never challenged by the plaintiff. The reason cited for not challenging the said GPA is that the document being a 30-year old document could not be challenged.

67. The trial Court had observed that the plaintiff in her cross examination, gave evasive replies when confronted with the 1963 GPA, B which bears her signature. She had also admitted that she was taken to Tehsil office in 1963 after her father's death. Therefore, it could be safely accepted that the plaintiff had executed the 1963 GPA and further she had knowledge of the sanction of mutation in pursuance of that GPA. Paragraph 45 of the judgment of the trial Court is extracted below:

C "45. Further, another fact which reveals that plaintiff was having knowledge regarding sanctioning of mutation of inheritance, is that, prior to sanctioning of mutation of inheritance of deceased Harbans Singh, she executed power of attorney along with other defendants dated 08.10.1963 Ex. D19 in favour of Gurdial Singh regarding the management of land and she admitted this thing in D her cross-examination that after the death of Harbans Singh, she was taken to Tehsil Office and when she was shown that power of attorney which bears her signatures on different points, she gave evasive reply."

68. The first appellate Court and the High Court had not made E any observation in that regard.

69. Since the 1963 GPA is a document which is more than 30 years old, we may advert to Section 90 of the 1872 Act, which provides for the presumption in favour of a 30-year old document. The same is extracted below:

F "90.- **Presumption as to documents thirty years old**.- Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court **may presume** that the signature and every other part of such document, which purports to be in the G handwriting of any particular person, is in that persons handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

H

Explanation.— Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

This explanation applies also to section 81."

(emphasis supplied)

70. The aforesaid provision employs the words 'may presume'. Thus, we may now refer to Section 4 of the 1872 Act in order to see the mode of dealing with the said presumption. The same is extracted hereunder:

"4.- **"May Presume"**.- Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it."

71. The presumption in favour of a 30-year old document is, therefore, a rebuttable presumption. Nothing prevented the plaintiff to rebut the presumption by leading appropriate evidence in order to disprove the same. Since the plaintiff failed to do so, the said document would be binding on the plaintiff. As a matter of fact, the parties had acted upon the terms of the said document without any demur since 1963 and it was, therefore, not open to resile therefrom at this distance of time. Hence, the trial Court was right in holding the 1963 GPA, to be a genuine document.

II. <u>LIMITATION</u>

72. The plaintiff asserted that she had attended a family function in February, 2001 and in the said function, while she was interacting with one Rustam Singh, he disclosed that the defendants have sold a portion of the joint lands. Subsequently, she made enquiries in that regard. As such, she had inspected the jamabandis of the joint lands and thereupon got knowledge about the existence of the disputed documents. Immediately upon discovery of the said documents, she filed the suits. The suits are filed within 3 years from the date of acquiring knowledge and are thus within limitation.

73. To support her case, the plaintiff relied upon the testimonies of DW3 and defendant No. 4, wherein it had come on record that the

A plaintiff, Nirmal Gill (respondent No. 1) and Rustam Singh were present in the aforesaid function. Nirmal Gill in her testimony as PW8 had deposed that there was a family gathering in December, 2000 whereat the plaintiff enquired from defendant Nos. 5 and 6 about the status of mutation, who informed that the mutation could not be effected until the encroachments on the lands at Jalandhar and Premgarh are cleared. Thereafter, in
B February 2001, there was another family gathering wherein Rustam Singh had passed on the said information to the plaintiff in her presence.

74. The trial Court, while examining the issue of limitation, had opined that when the documents were proved to have been executed by the plaintiff in 1990, it ought to have been challenged within 3 years of its
C execution. It was further observed that when a specific plea is taken that the plaintiff acquired knowledge about fraud recently in a family function, she was obliged to examine such person who disclosed the information and the plaintiff failed to do so. Notably, the date of the family function had been wrongly mentioned by the trial Court as
D December, 2001. Paragraphs 94 and 98 of the trial Court's judgment are reproduced below:

> "94. I find merits in these arguments advanced by Learned Defence Counsel because when the plaintiff is taking a specific plea that in some family function in December, 2001 which she as
E well as her daughter attended, this thing came to their knowledge that the power of attorney has been forged and on the basis of that Harcharan Kaur had executed the sale deeds of the share of plaintiff, then in those circumstances the plaintiff was required to examine that person who disclosed that information to the plaintiff. But the plaintiff has not examined any that person.
>
> F
>
> xxx xxx xxx
>
> 98. In my opinion, when the plaintiff is specifically stating to have received the information in some family function, then she was required to examine that person from whom she received the
G information. But no such evidence is coming forward. **Moreover, when the Court has come to the conclusion that the disputed documents were executed by Harcharan Kaur (Joginder Kaur [sic]) on dated 29.06.1990, 28.06.1990, 03.07.1990, then in those circumstances, if any fraud etc. has been played upon by the plaintiff, the plaintiff was required to file the**
>
> H

suit within the period of three years. So apparently the suit filed by the plaintiff is barred by limitation. Therefore, the said issues stand decided in favour of the defendants and against the plaintiff."

(emphasis supplied)

75. The first appellate Court in its judgment confirmed the findings of the trial Court that the suits were barred by limitation. While doing so, the first appellate Court had also proceeded on the wrong premise that the family function was held in December, 2001. Finally, the first appellate Court held that since the 1990 GPA had been proved to have been executed by plaintiff, the question of acquiring knowledge in the family function loses significance.

76. In contrast, the High Court had noted that the factum of the family function and plaintiff's presence thereat was admitted by defendant No. 4. The High Court then went on to reverse the findings of the trial Court and the first appellate Court whilst opining the testimony of Rustam Singh cements the case of the plaintiff and it was apparent that the plaintiff had no reason to suspect her brothers at an earlier point of time and she was not even aware of the acts of the defendants. The said facts came to light only after the plaintiff conducted inquiries. The relevant portion of the High Court's judgment is set out hereunder:

"....

… Learned courts below have further erred in holding that the suits are barred by limitation. The plaintiff's case is that she came to know about the fraud being perpetuated by her own step brothers and sister-in-law after she settled in Punjab, subsequent to the retirement of her husband and consequent increased frequency of her interaction with her relatives. Marriage of her paternal uncle's son (Taya's son) is admitted by DW 6 Rattan Singh. It is further admitted that the plaintiff was present at the said wedding. **Testimony of Rustam Singh cements the case of the plaintiff**. ..."

(emphasis supplied)

77. Before analysing the correctness of the decisions arrived at, let us see the settled legal position as to effect of fraud on limitation as

prescribed in Section 17 of the Limitation Act, 1963[15]. The said provision reads as under:

> "17.– **Effect of fraud or mistake**.- (1) Where, in the case of any suit or application for which a period of limitation is prescribed by this Act,—
>
> (a) **the suit or application is based upon the fraud of the defendant** or respondent or his agent; or
>
> (b) the knowledge of the right or title on which a suit or application is founded is concealed by the fraud of any such person as aforesaid; or
>
> (c) the suit or application is for relief from the consequences of a mistake; or
>
> (d) where any document necessary to establish the right of the plaintiff or applicant has been fraudulently concealed from him,
>
> **the period of limitation shall not begin to run until the plaintiff or applicant has discovered the fraud** or the mistake or could, with reasonable diligence, have discovered it; or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production
>
> ....."
>
> (emphasis supplied)

78. Therefore, for invoking Section 17 of the 1963 Act, two ingredients have to be pleaded and duly proved. One is existence of a fraud and the other is discovery of such fraud. In the present case, since the plaintiff failed to establish the existence of fraud, there is no occasion for its discovery. Thus, the plaintiff cannot be extended the benefit under the said provision.

79. It must be noted that the trial Court was in error to hold that the person who has disclosed the information was not examined by the plaintiff, when it had come on record through the testimony of Kultar Singh (DW2), that Rustam Singh expired before the suits came up for trial. If so, the finding of the High Court that the testimony of Rustam

[15] for short, "the 1963 Act"

Singh strengthened the case of plaintiff is *ex-facie* erroneous and manifestly wrong. In as much as, the said person was never examined before the Court in these proceedings. Further, the trial Court and the first appellate Court had erroneously assumed the date of function in December, 2001 in place of February, 2001. However, that will have no bearing on the finding on the factum of non-existence of fraud. The concurring findings recorded by the trial Court and the first appellate Court - that the documents were executed by the plaintiff - belies and demolishes the case of the plaintiff, as to having acquired knowledge of alleged fraud in 2001. Therefore, the High Court committed manifest error in reversing the concurrent findings of the trial Court and the first appellate Court in that regard.

CONCLUSION

80. It is settled that the standard of proof required in a civil dispute is preponderance of probabilities and not beyond reasonable doubt. In the present cases, though the discrepancies in the 1990 GPA are bound to create some doubt, however, in absence of any tangible evidence produced by the plaintiff to support the plea of fraud, it does not take the matter further. Rather, in this case the testimony of the attesting witness, scribe and other independent witnesses plainly support the case of the defendants. That evidence dispels the doubt if any; and tilt the balance in favour of the defendants.

81. Suffice it to observe that since the plaintiff could not establish the existence of fraud, it must follow that the suits are *ex-facie* barred by limitation.

82. As to the title of the subsequent purchasers, since the 1990 GPA had been proved, there is no reason to doubt their bonafides.

83. In view of the foregoing discussion, we hold that the trial Court and the first appellate Court had appreciated the evidence properly and that view being a possible view, the High Court ought not to have disturbed the same in the second appeal and that too on surmises and conjectures.

In the result, the present appeals are allowed and the impugned judgment and decree passed by the High Court is set aside. The judgment and decree passed by the first appellate Court is hereby restored. No order as to costs. Pending applications, if any, are disposed of.

Kalpana K. Tripathy Appeals allowed.