



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

ON THE 10<sup>th</sup> DAY OF DECEMBER, 2021

BEFORE

HON'BLE MS. JUSTICE JYOTSNA REWAL DUA

(I) REGULAR SECOND APPEAL No.517 OF 2010

Between :-

RAM RATTAN, S/O SHRI BANTA RAM,  
R/O VILL. SANOLI ROAD,  
SANTOKHGARH, TEHSIL & DISTRICT  
UNA, H.P.

...APPELLANT/PLAINTIFF

(BY MR. B.S. CHAUHAN, SENIOR ADVOCATE WITH MR.  
MUNISH DATWALIA, ADVOCATE)

AND

1. SHRI SAT PAL SAINI, S/O SHRI  
MOTI RAM ALIAS UPINDER LAL,  
R/O SIDHUWAL LODGE, THE  
RIDGE, SHIMLA, H.P.
2. SHRI ASHOK KUMAR, S/O SHRI  
MOTI RAM ALIAS UPINDER LAL,  
R/O MOHALL GHUMARAWALA,  
SANTOKHGARH, TEHSIL &  
DISTRICT UNA, H.P.

...RESPONDENTS/DEFENDANTS No. 1 & 2

( MR. Y.P. SOOD, ADVOCATE, FOR RESPONDENT No. 1)

(MS. DEVYANI SHARMA, ADVOCATE, FOR  
RESPONDENT No. 2)

(II) REGULAR SECOND APPEAL No.499 OF 2010

Between :

1. SHRI SAT PAL SAINI, S/O SHRI  
MOTI RAM ALIAS UPINDER LAL,  
R/O SIDHUWAL LODGE, THE  
RIDGE, SHIMLA, H.P.

...APPELLANT/DEFENDANT No.1

(BY MR. Y.P. SOOD, ADVOCATE)

AND

1. ASHOK KUMAR, SON OF MOTI  
RAM ALIAS UPINDER LAL,  
RESIDENT OF MOHALLA  
GHUMARAWALA,  
SANTOSHGARH, TEHSIL AND  
DISTRICT UNA, H.P.

RESPONDENT/DEFENDANT No.2

2. RAM RATTAN, SON OF BANTA  
RAM, RESIDENT OF SANOLI  
ROAD, SANTOSHGARH, THE SIL  
AND DISTRICT UNA, H.P.

..PROFORMA RESPONDENT/PLAINTIFF

(MR. B.S. CHAUHAN, SENIOR ADVOCATE WITH MR.  
MUNISH DATWALIA, ADVOCATE FOR PROFORMA  
RESPONDENT).

(MS. DEVYANI SHARMA, ADVOCATE, FOR  
RESPONDENT/DEFENDANT No. 2)

**RESERVED ON : 26.11.2021**

**DELIVERED ON : 10.12.2021**

**WHETHER APPROVED FOR REPORTING : YES**

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*This petition coming on for pronouncement this day, Hon'ble Ms. Justice Jyotsna Rewal Dua, delivered the following :*

**J U D G M E N T**

These two appeals arise out of common judgments and decrees passed by the learned Courts below, hence are taken up together for decision. RSA No. 517 of 2010 is plaintiff's appeal whereas RSA No. 499 of 2010 is defendant No.1's appeal.

Defendants No. 1 & 2 are sons of late Smt. Gurbax Kaur. Smt. Gurbax Kaur, defendant No. 2 and daughters of Smt. Gurbax Kaur had executed a General Power of Attorney (in short GPA) in favour of defendant No. 1 on 09.03.1981. Plaintiff's case was that defendant No. 1 acting as GPA of his mother, on 11.09.2001 executed an agreement to sell the suit land to the plaintiff for a sale consideration of Rs. 75,000/-. Earnest money of Rs. 10,000/- was received by Smt. Gurbax Kaur and Rs. 30,000/- was received by defendant No.1 towards sale consideration. Instead of executing the sale deed in plaintiff's favour, Smt.

Gurbax Kaur sold the suit land in favour of defendant No. 2 vide a registered sale deed on 28.12.2001. In his written statement, defendant No. 1 supported plaintiff's case in entirety but did not step into the witness box. Defendant No. 2 vehemently contested plaintiff's case and called the suit to be collusive between plaintiff and defendant No. 1. Learned trial Court decreed the suit on 16.03.2009. Learned First Appellate Court on 16.08.2010 reversed the decree and dismissed the suit. Plaintiff was, however, held entitled to recover Rs. 30,000/- from defendant No. 1. Aggrieved against dismissal of his suit, plaintiff has preferred RSA No. 517 of 2010. Defendant No. 1 has filed RSA No. 499 of 2010 against the common judgment and decree, whereby he has been held liable to pay Rs. 30,000/- alongwith interest @ 6% per annum from the date of institution of suit till its realization to the plaintiff.

**2.** Brief **facts** may now be noticed :-

**2(i)** A civil suit was instituted by the appellant for (i) possession through specific performance of an agreement to sell, dated 11.09.2001 of land comprised in Khewat No. 595, Khatauni No. 646, Khasra Nos. 1540, 1541 and 1542, measuring 114.86 square meters, situated at village Santoshgarh, Tehsil and District Una, H.P.; (ii) declaration that sale deed dated 28.12.2001

executed in favour of defendant No. 2 with respect to the suit land is illegal, null and void.

The factual foundation pleaded in the plaint was that defendant No. 1 (respondent No. 1) was the GPA of his mother Smt. Gurbax Kaur, his brother Ashok Kumar (defendant No. 2) and his sisters (non parties to the suit). Smt. Gurbax Kaur was owner in possession of the suit land. In July, 2001, the defendants alongwith their mother approached the plaintiff to sell the suit land. A consensus was arrived on 09.07.2001 regarding purchase of suit land by the plaintiff for a total sale consideration of Rs. 75,000/-. A sum of Rs. 10,000/- was paid by the plaintiff as earnest money on 09.07.2001. A sum of Rs. 5,000/- was paid on 07.08.2001. Rs. 5,000/- was also advanced on 21.08.2001 towards sale consideration. At the time of payment of further amount of Rs. 20,000/- an agreement to sell the suit land was executed in plaintiff's favour on 11.09.2001 by defendant No. 1 as the general power of attorney on behalf of his mother. The plaintiff pleaded that the defendants and their mother received total amount of Rs. 40,000/- towards total sale consideration of Rs. 75,000/-. The plaintiff was ready and willing to pay the balance sale consideration amount of Rs. 35,000/-, however, the mother of the defendants died in February, 2002. The sale deed

was not executed in plaintiff's favour. After issuing legal notice to the defendants on 29.08.2002, the plaintiff inspected the revenue record and became aware of the fact that sale deed of suit land had already been executed by late Smt. Smt. Gurbax Kaur in favour of her son i.e. defendant No. 2 on 28.12.2001.

In the backdrop of above facts, plaintiff instituted the suit for specific performance of agreement dated 11.09.2001 and for declaration that the sale deed dated 28.12.2001 and consequent revenue entries in favour of defendant No. 2 were void and illegal.

**2(ii)** In his written statement, defendant No. 2 claimed the suit filed by the plaintiff to be collusive, fraudulent and at the instigation of defendant No. 1. Defendant No. 2 admitted execution of sale deed of suit land and the '*abadi*' standing over it, in his favour by his mother Smt. Gurbax Kaur on 28.12.2001. Defendant No. 2 pleaded himself to be owner in possession of the suit land and that he had raised construction over it. He denied his mother entering into any agreement to sell the suit land in favour of plaintiff or having received any money in lieu thereof. He also denied his mother having approached the plaintiff for sale of suit land. He also pleaded that his mother never authorized defendant No. 1 to sell the suit land in favour of

plaintiff. That he (defendant No. 2) was bonafide purchaser of the suit land for valuable consideration. Defendant No. 2 submitted that his brother i.e. defendant No. 1 was appointed as GPA by him (defendant No.2) and their mother to look after and manage their joint property in Ranchi (Bihar) and Hoshiarpur (Punjab). Defendant No. 1 became dishonest and alienated entire joint property in Bihar and some of the properties in Punjab on the basis of GPA without the consent of defendant No. 2 and his mother. On coming to know these facts, they cancelled the GPA in favour of defendant No.1.

**2(iii)** Defendant No. 1 in his written statement admitted entire case of the plaintiff and denied the averments of the written statement filed by defendant No.1. He submitted that the sale deed of the suit land in favour of defendant No. 2 was got executed taking undue advantage of absence of defendant No.1. That it was fabricated and fictitious sale deed. That defendant No. 2 was liable to execute the sale deed in favour of plaintiff since the suit land was now in the name of defendant No. 2.

**2(iv)** Plaintiff and defendant No. 2 led evidence in support of their respective contentions. Defendant No. 1 did not adduce any evidence. Learned trial Court decreed the suit vide judgment and decree dated 16.03.2009. The decree was reversed by the

learned First Appellate Court on 16.08.2010. Plaintiff's suit was dismissed. He, however, was held entitled to recover Rs. 30,000/- from defendant No. 1.

It is in the aforesaid background that the plaintiff and defendant No. 1 have preferred their respective appeals.

3. **RSA No. 517 of 2010**

This appeal was admitted on 03.12.2010 on the following substantial questions of law :-

"1. Whether learned District Judge erred in appreciating the provisions of law applicable, pleadings of the parties and evidence adduced by them in its right perspective thereby vitiating the impugned judgment and decree ?

2. Whether learned District Judge erred in appreciating the oral and documentary evidence with special reference to documents, Exhibit PW-2/A, exhibit PW-5/A, exhibit P-4 and exhibit P-5 and so also the statement of PW-2 thereby vitiating the impugned judgment and decree ?"

**RSA No. 499 of 2010**

This appeal was admitted on 24.11.2010 on the following substantial questions of law :-

"1. Whether a decree for recovery of Rs. 30,000/- could be passed against the appellant in the absence of any claim set up by the plaintiff in the suit and the decree as passed is beyond pleadings and the findings recorded by the learned First Appellate Court contrary to the pleadings are vitiated ?



2. Whether the appellant who was having legal and valid General Power of Attorney of his mother could be held personally liable for the acts done by him while acting as General Power of Attorney of his mother and the findings thus recorded by the learned Appellate Court are vitiated ?

3. Whether the suit could be held to be filed in collusion with the appellant simply on the ground that the appellant had admitted the execution of agreement to sell Ex. PW-2/A executed by him as General Power of Attorney and the findings thus recorded are vitiated ?

4. The substantial questions of law formulated in both the appeals are all based on facts and can be answered after considering the pleadings and the evidence.

I have heard Shri B.S. Chauhan, learned senior Counsel for the appellant, Shri Y.P. Sood, learned counsel for respondent No. 1 and Ms. Devyani Sharma, learned counsel for respondent No. 2. With their assistance, I have seen the record of case files.

There are two aspects of the case :-

One revolves around the agreement to sell dated 11.09.2001 allegedly executed by defendant No. 1 as GPA of his mother Smt. Gurbax Kaur in favour of the plaintiff regarding sale of the suit property. Plaintiff seeks enforcement of this agreement.

The other revolves around the sale deed dated 28.12.2001 allegedly executed by Smt. Gurbax Kaur in favour of defendant No. 2 of the suit property. Plaintiff has questioned this sale deed.

The above two aspects are being separately considered hereinbelow :-

**4(a) Regarding agreement to sell dated 11.09.2001**

Following is relevant in this regard.

4(a)(i) The case set up by the plaintiff is that agreement to sell dated 11.09.2001 (Ex. PW-2/A) was preceded by three receipts.

First receipt is dated 09.07.2001 (Ex. PW-5/A). According to this receipt, an amount of Rs. 10,000/- was received by Smt. Gurbax Kaur from the plaintiff as earnest money towards sale consideration with respect to the sale of suit land by her to plaintiff against total agreed sale consideration of Rs. 75,000/-.

To the naked eye, the receipt (Ex. PW-5/A) does not appear to be genuine. The last lines appear to have been squeezed in the receipt in order to deliberately adjust them above the existing thumb impression stated to be that of Smt. Gurbax Kaur.

As per this receipt, Smt. Gurbax Kaur the vender received Rs. 10,000/- from the plaintiff on 09.07.2001. In his

affidavit, submitted by way of examination-in-chief, the plaintiff (PW-4) stated that the receipt was handed over to him by Smt. Gurbax Kaur on 09.07.2001 after receiving Rs. 10,000/-. However, in his cross examination, he stated that this receipt was not prepared before him. He did not know who wrote the receipt and where. He could not even name the persons in whose presence the receipt was written. He stated that he was handed over the receipt by Bhagat Ram. However, he again stated that Bhagat Ram and Smt. Gurbax Kaur were there while handing over the receipt to him. PW-5 Madan Lal though identified his father's (Bhagat Ram) signature at the bottom of the receipt, however, PW-5 is not a witness to the contents or to the events described in the document.

Under the orders of learned trial Court, the Finger Print Bureau Phillaur was sent receipt dated 09.07.2001, cancellation deed dated 19.01.2002 and sale deed dated 28.12.2001. The Bureau reported that *"impression Q on the receipt Ex. PW-5/A dated 09.07.2001 is sufficiently ink smudged and do not permit of comparison on its dependable ridge characteristic details. Hence no opinion can, therefore, be given on it."*

4(a)(ii) The receipts dated 07.08.2001 (Ex. P-4) and dated 21.08.2001 (Ex. P-5) bear the signatures of defendant No. 1 as

recipient of the earnest money. Surprisingly, Ex. PW-5/A which allegedly bears the thumb impression of Smt. Gurbax Kaur was stated to be witnessed by Bhagat Ram, whereas for executing these two receipts, i.e. Ex. P-4 and P-5, the witness was not considered necessary. The obvious reason for the same, which immediately flashes, is that Ex. PW-5/A needed to be secured by the plaintiff and defendant No. 1 in order to show that it was executed by Smt. Gurbax Kaur, whereas the other two receipts are executed by defendant No. 1 who has admitted the entire case of the plaintiff and is in league with him.

4(a) (iii) Case of the plaintiff is that on 11.09.2021, defendant No. 1 as GPA of Smt. Gurbax Kaur received Rs. 20,000/- from him for his (defendant No.1's) mother in lieu of intended sale of the suit land and executed an agreement to sell. This agreement to sell is Ex. PW-2/A. A close look at this agreement shows its execution in somewhat unusual manner. The witnesses have not signed at the end of the document. One of the witnesses Mangat Ram signed on the left hand side margin at the first page of the agreement and the other witness Dharam Chand signed on the left hand margin of the second page of the agreement. The vendee/plaintiff has not signed at the bottom of the agreement, but on the left hand margin of the first page of the agreement.

The agreement (Ex. PW-2/A) makes no reference to the house standing over the suit land. The plaintiff in his affidavit furnished by way of examination-in-chief stated that house was also intended to be sold under the agreement. While deposing in his cross-examination as PW-4, he stated that agreement records sale of house whereas it is not so recorded in the agreement.

The agreement (Ex. PW-2/A) is scribed by document writer Anil Jaswal, who appeared in the witness box as PW-2. In his affidavit furnished by way of examination-in-chief, he stated having scribed the agreement on the asking of defendant No. 1 and that after scribing the same, he read out the document to defendant No. 1 and the witnesses. He has not mentioned that plaintiff was present at the time of execution of the agreement. Anil Jaswal was directed to produce his register of entry of documents. During his cross-examination, he stated to have lost this register and did not produce it.

Mangat Ram, who allegedly witnessed the execution of the agreement, dated 11.09.2001 did not step into the witness box. Dharam Chand, the other witness to the agreement, also did not step into the witness box. The Notary Public also did not step into the witness box. The defendant No.1, who executed the

agreement as GPA of his mother in favour of the plaintiff, also did not step into witness box.

The plaintiff in his affidavit, furnished by way of examination-in-chief, stated that defendant No. 1 as GPA of his mother had executed the agreement to sell in his favour on 11.09.2001 through scribe Anil Jaswal in presence of witnesses. He further goes on to state that the agreement was scribed in presence of witnesses. It was read out to them and thereafter they appended their signatures on the same. That he had paid an amount of Rs. 20,000/- to defendant No. 1 on 11.09.2001, whereas in cross examination, he deposed that after getting the document scribed from the document writer, he had left the premises. That he never appeared before any authority for the attestation of the document. He further states in his cross examination that the document was taken for notarization after 2-3 days of its execution. He failed to recall the day and the events relating to this agreement.

Defendant No. 2 stated that defendant No.1 had colluded with the plaintiff to deprive him the suit property. Plaintiff in connivance with defendant No. 1 had created fictitious receipts and agreement to sell. He also stated that entire property of his mother and three sisters at Hoshiarpur and Ranchi had been sold

by defendant No. 1. Further, that Smt. Gurbax Kaur was left with suit property alone.

**4(b) Sale Deed dated 28.12.2001 executed in favour of defendant No. 2.**

4(b)(i) Ex. DW-3/A is the sale deed executed on 28.12.2001 in favour of defendant No. 1. In terms of this sale deed, the seller Smt. Gurbax Kaur had sold the suit land in favour of defendant No. 2. The sale deed was registered on 19.01.2002 at Sr. No. 1923. DW-5 is the registration Clerk who has proved the registration of Ex. DW-3/A vide endorsement Ex. DW-5/B. DW-6 is the scribe of the sale deed (Ex. DW-3/A). He has stated that the document was scribed by him on the asking of Smt. Gurbax Kaur and was read out to her and the witnesses as well as to defendant No. 1. After understanding it, they had appended their thumb impressions/signatures over it. He has also given the details of the serial number and the date when the document was entered in the register maintained by him for the said purpose.

DW-9 is an Advocate, who had attested the sale deed. He testified that he and Jarnail Singh had witnessed execution of sale deed Ex. DW-3/A. He deposed that scribe had read out the document to the seller Smt. Gurbax Kaur who after admitting it to be correct appended her thumb impression on it. That witnesses

also signed the document. That the document was taken to the Sub Registrar for registration. That the Sub Registrar had read out the document to all before registering it. Defendant No. 2 has proved execution of sale deed in accordance with law.

Ex. DW-7/A is the document whereby defendant No. 2 cancelled the GPA earlier executed by him in favour of defendant No. 1. This document was registered on 19.01.2002. The document has been proved in accordance with law.

Ex. DW-5/A is a document whereby Smt. Gurbax Kaur and her daughters cancelled the GPA earlier executed by them in favour of defendant No. 1. Ex. DW-5/A was executed on 19.01.2002. The document was registered and has been proved in accordance with law. This document records an averment that defendant No. 1 had not withstood the confidence reposed in him by his mother Smt. Gurbax Kaur and sisters.

4(b)(ii) Ex. DW-4/A is the copy of plaint filed by defendant No. 1 against defendant No. 2. This Civil Suit No. 218 of 2002 was instituted by defendant No. 1 on 30.09.2002 against defendant No. 2. In this civil suit, challenge was made by defendant No. 1 to the sale deed executed by Smt. Gurbax Kaur in favour of defendant No. 2 on 28.12.2001. Contention of defendant No. 1 was that the sale deed was void and suit



property, therefore, be declared as joint property of defendants No. 1 and 2. Mutation No. 89, attested in favour of defendant No. 2 on the basis of the sale deed be also declared void. Noticeable fact is that in the entire plaint, there is no mention of any agreement to sell dated 11.09.2001 executed by defendant No. 1 as GPA of his mother for selling the suit land in favour of plaintiff. The suit filed by defendant No. 1 was dismissed in default on 24.09.2004. The order has attained finality.

4(b)(iii) Ex. D-2 is copy of an order passed by Settlement Collector Kangra on 22.12.2003 dismissing the appeal preferred by defendant No. 1 against mutation No. 89, attested on 02.01.2002 in favour of defendant No. 2 with respect to the suit land. The order notices the fact that sale deed with respect to the suit land was executed in favour of defendant No. 2 on 28.12.2001. In terms of this sale deed, the vender (Smt. Gurbax Kaur) had sold the suit land for a sale consideration amount of Rs. 53,500/- to defendant No. 2. This sale deed was registered at Sr. No. 1923 on 28.12.2001. On the basis of this sale deed, mutation No. 89 was attested in favour of defendant No. 2. The seller was alive at the time of attestation of mutation. The order dated 22.12.2003 has become final.

5. Having discussed above the entire relevant evidence, there is no escape from concluding that in the facts and circumstances of the case, the agreement to sell dated 11.09.2001 is the result of fraud and collusion between plaintiff and defendant No.1. Suit filed by the plaintiff for specific performance of this agreement cannot be decreed. The reasons for this are :-

5(a) Plaintiff's main thrust is on the stand taken by defendant No. 1 in his written statement. Defendant no. 1 in his written statement has admitted that he had executed the agreement to sell dated 11.09.2001 as a GPA holder of his mother Smt. Gurbax Kaur in favour of the plaintiff. He has also admitted in his written statement that his mother intended to sell the suit property to the plaintiff for a sale consideration of Rs. 75,000/-. That she herself received Rs. 10,000/- on 09.07.2001, whereas as her GPA, he received Rs. 5,000/- on 07.08.2001, Rs. 5,000/- on 21.08.2001 and Rs. 20,000/- on 11.09.2001.

Defendant No. 2 has not admitted plaintiff's case. Defendant no. 2 is the person in whose favour sale deed Ex. PW-3/A has been executed by Smt. Gurbax Kaur on 28.12.2001. Defendant No. 1 may have admitted plaintiff's case in his written statement, but he did not step into the witness box. Defendant

No. 2 did not get any opportunity to cross examine defendant No.

1. Plaintiff's case was primarily based upon defendant No. 1's admission. Plaintiff did not produce defendant No. 1 in the witness box. Defendant No. 1's written statement cannot be taken to be true and accepted as such as against the version of defendant No. 2. The credibility of stand taken by defendant No. 1 has gone un-tested. Defendant No. 1 has not cross examined defendant No. 2, rather plaintiff has cross examined defendant No. 2. The other evidence on record in this regard becomes material in view of defendant No. 1 having not deposed.

5(b) Defendant No. 1 was aware that sale deed with respect to the suit land and the 'abadi' standing over it, had been executed by Smt. Gurbax Kaur in favour of defendant No. 2 on 28.12.2001. Mutation No. 89 on the basis of the sale deed was attested in favour of defendant No. 2 on 02.01.2002. Defendant No. 1 had challenged the order of attestation of mutation. His appeal was dismissed by the Settlement Collector on 22.12.2003. While dismissing the appeal, the Collector recorded a finding that the vender Smt. Gurbax Kaur was alive on 02.01.2002 at the time of attestation of mutation. Defendant No. 1 did not challenge the order dated 22.12.2003 any further.

In his written statement filed on 28.02.2003, defendant No. 1 has not even cared to mention about his challenge to the mutation attested in favour of defendant No. 2.

5(c) Defendant No. 1 had filed a civil suit challenging the sale deed executed in favour of defendant No. 2. This civil suit (Ex. DW-4/A) was filed on 30.09.2002. In this plaint, defendant No.1 does not mention anything about his executing any agreement to sell on 11.09.2001 in favour of present plaintiff. His written statement filed in the present civil suit on 28.02.2003 admitting entire case of the plaintiff with respect to execution of agreement dated 11.09.2001 become suspicious. The evidence in respect of agreement to sell dated 11.09.2001 and the receipts relied upon by the appellant/plaintiff have already been discussed earlier. The present suit filed by the appellant has to be held as collusive with defendant No. 1.

5(d) Defendant No.1-the executant, of the agreement dated 11.09.2001, for specific performance of which the present suit has been filed, did not step into the witness box. Alleged witness to the agreement i.e. Mangat Ram also did not step into the witness box. Dharam Chand, the second witness to the agreement was also not produced in the witness box. The person who notarized the agreement was also not produced. Scribe of

the agreement though appeared in the witness box, but his deposition runs contrary on material particulars to the deposition of the plaintiff. Scribe's statement does not even inspire confidence. He deposed having executed the agreement only at the instance of defendant No. 1. He does not even refer to the presence of the plaintiff at the time of scribing the agreement. Despite having been asked to produce the register wherein the document i.e. agreement to sell dated 11.09.2001 was allegedly entered, the scribe did not produce the register.

**5(e)** Learned senior Counsel for the appellant/plaintiff argued that the sale deed executed in favour of defendant No. 2 by his mother was illegal and void on the ground that no money was transacted between the vender and vendee. It was highlighted that sale must be for a valid consideration. Section 54 of the Transfer of Property Act was pressed into service which reads as under :-

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

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

*In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property. Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.*

**Contract for sale.**—*A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest in or charge on such property.”*

In support of the above submissions, reliance was placed upon a decision of Hon'ble Apex Court dated 22.11.2021 in **Civil Appeal Nos. 6989-6992 of 2021**, titled **Kewal Krishan Vs. Rajesh Kumar and others etc.** wherein it was held that a sale of an immovable property has to be for a price. The price may be payable in future. It may be partly paid and the remaining part can be made payable in future. The payment of price is an essential part of a sale covered by section 54 of the TP Act. If a sale deed in respect of an immovable property is executed without payment of price and if it does not provide for the payment of price at a future date, it is not a sale at all in the eyes of law. It is of no legal effect. Therefore, such a sale will be void. It will not effect the transfer of the immovable property.

In **AIR 1922 Madras 311**, titled **Madam Pilai Vs.**

**Badrakali Ammal and another**, it was held that "price has a well defined meaning. It means money, but not necessarily money handed over in current coin at the time but includes money which might be already due, or might be payable in the future."

In the instant case, sale deed (Ex. DW-3/A) was executed by Smt. Gurbax Kaur in favour of defendant No. 2 for Rs. 53,500/- which were lent to her/spent on her by him. Sale deed records the fact that defendant no. 2 has been taking care of his mother, providing her with food, clothing, shelter etc. The sale deed also records that vender-Gurbax Kaur has already been paid Rs. 53,500/- by defendant No. 2 and in lieu of the same, she had executed the sale deed. Sale deed (Ex. DW-3/A) is not without consideration. In the facts of the case, sale deed (Ex. DW-3/A) cannot be said to be a sham transaction. It was a registered sale deed, duly proved in evidence in accordance with law. On the basis of this sale deed, mutation No. 89 was attested in favour of defendant No. 2. The vender was herself alive at the time of attestation of mutation. The sale deed has been questioned by the plaintiff. It has already been held that agreement to sell the suit land executed by defendant No. 2 as GPA of Smt. Gurbax Kaur in favour of plaintiff is collusive and

cannot be enforced by the plaintiff. Proceeding from there, plaintiff becomes a third party. It is settled law that passing of consideration under a sale deed cannot be questioned by a third party. {**Re: (2016) 12 SCC 288 Muddasani Venkata Narsaiah Vs. Muddasani Sarojana**}. Insofar as defendant No. 1 is concerned, he already took his chance in challenging the sale deed (Ex.DW-3/A) in the civil suit and lost it.

6. In view of above discussion, both substantial questions of law formulated in the Regular Second Appeal No. 517 of 2010 are answered against the appellant/plaintiff. Learned first appellate Court did not commit any error in appreciating the pleadings, the evidence and law in dismissing the suit filed by the plaintiff. The oral as well as documentary evidence including Ex. PW-2/A, Ex. PW-5/A, Ex. P-4, Ex.P-6 and statement of PW-2 were all properly considered and appreciated by the learned first appellate Court. Consequently, I find no merit in Regular Second Appeal No. 517 of 2010.

7. For all the above reasons, the substantial questions of law framed in RSA No. 499 of 2010 are decided against the appellant therein (defendant No.1). Defendant No. 1 has admitted receipt of an amount of Rs. 30,000/- from the plaintiff for sale of suit land in plaintiff's favour. Therefore, learned first appellate



Court was justified in holding the plaintiff entitled to the recovery of this amount alongwith interest from defendant No. 1. Consequently, I find no merit in Regular Second Appeal No. 499 of 2010.

Regular Second Appeal No. 517 of 2010 and Regular Second Appeal No. 499 of 2010 are dismissed. Pending applications, if any, in both the appeals are also disposed off.

10<sup>th</sup> DECEMBER, 2021 (K)

**( Jyotsna Rewal Dua )**  
**Judge**