2023INSC737

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 8830 OF 2012

RAMATHAL & ORS. ...APPELLANT(S)

VERSUS

K. RAJAMANI (DEAD)
THROUGH LRS & ANR. ...RESPONDENT(S)

J U D G M E N T

VIKRAM NATH, J.

1. The present appeal by the plaintiffs assails the correctness of the judgment and order dated 21.11.2008 passed by the Madurai Bench of the Madras High Court, whereby Second Appeal No. 648 of 2002 titled "**N.Krishnasamy Mudaliar (D) and Ors. Vs. Ramathal and Ors."** was allowed, after setting aside the judgement of the First Appellate Court, the order of the Trial Court was

restored, and the suit of the plaintiff (present appellant) was dismissed.

2. The dispute relates to 110 cents of land at No. 95, East Ayakudi Village, Palani, Tamil Nadu which originally belonged to the first plaintiff, Natchimuthu. He had executed a gift deed in favour of his first wife, Ramathal in respect of 50 cents of land. The suit was filed jointly by Natchimuthu and his wife Ramathal, described as plaintiff nos. 1 and 2, respectively.

3. In the same village Ayakudi, one Krishnasamy and his two sons, Rajamani and Sakthivelu, were also residing and were well known to the plaintiffs. The plaintiffs, being illiterate and having no other source of income, requested Rajamani to develop the land in suit into several plots after obtaining necessary permissions from the Government officials so that the said plots could be sold to generate revenue for the plaintiffs. In lieu of this service, they offered five cents of land as consideration to Rajamani.

4. A Power of Attorney dated 05.09.1986 was executed in favour of Rajamani by the plaintiffs for the aforesaid purpose. The said deed was produced before the Registering Authority on 17.09.1986 and was registered on 19.09.1986. According to the plaintiffs, Rajamani taking advantage of their illiteracy and simplicity, in addition to the purpose for which the plaintiffs had requested for executing the Power of Attorney, additionally got two more clauses added to it. Firstly, the Attorney would have the right to sell the property, and secondly, to make endorsements in the required documents for Patta transfer.

5. On the date, the Power of Attorney was registered i.e.19.09.1986, Rajamani executed two sale deeds: one in favour of his father, Krishnasamy for 50 cents of land, and the other in favour of his younger brother, Sakthivelu for 50 cents of land. Both sale deeds were undervalued, as the sale consideration was shown to be Rs. 6,000/- per sale deed, and due stamp duty was paid thereon. However, as per the guideline value of

the property, the first sale ought to have been valued at Rs. 15,000/- and the second sale at Rs. 7,500/-. In view of the deficiency of stamp duty on account of undervaluation, both documents were impounded by the authorities.

6. Sometime in 1988, Krishnasamy and his two sons, Rajamani and Sakthivelu, started interfering with possession of the land in suit. It was only then that the plaintiffs came to know about the two sale deeds executed by Rajamani in favour of his father and brother. They also threatened the plaintiffs of initiating criminal proceedings against them. On 25.04.1991, the plaintiffs obtained a certified copy of the Power of Attorney, and soon thereafter, the plaintiffs came to know of the mischief committed by Rajamani for incorporating the power to sell, create mortgage, execute sale deed, settlement deed, gift deed, exchange deed and also to make endorsements for Patta transfer, and if needed, to divide the suit property into plots after obtaining layout approval from the concerned authority and to take further action thereof.

7. The plaintiffs were thus compelled to initiate legal proceedings. They issued a legal notice through their counsel on 29.04.1991, which despite being served, no reply was given. In October 1991, the plaintiffs instituted a suit for declaration as the absolute owners of the suit properties and also for consequential relief of permanent injunction on the ground that there was misrepresentation in the General Power of Attorney. This was registered as Original Suit No. 839 of 1991 in the Court of the District Munsiff at Palani. Krishnasamy, the father, was arraigned as defendant no. 1, Rajamani, the Attorney, was arraigned as defendant no. 2 and Sakthivelu was arraigned as defendant no. 3. Defendant nos. 1 and 2 only filed their written statements while Defendant no. 3 chose not to contest the suit, and no written statement was filed on his behalf.

8. Both the parties led evidence, both documentary as well as oral. The Trial Court, vide judgment and order dated 06.01.1998, dismissed the suit relying upon the contents of the Power of Attorney to be genuine. It did not accept the plea

of the plaintiffs that defendant no. 2 had misrepresented and played mischief by incorporating the power to sell and other clauses of transfer of Patta etc., which according to the plaintiffs they had never authorised.

9. The plaintiffs preferred a First Appeal before the Sub-Court at Palani which was registered as A.S. No. 28 of 1998. During the pendency of the appeal, the first plaintiff died and his legal heirs were brought on record. The First Appellate Court framed points for consideration including the point of *non est factum* and after due analysis and appreciation of the evidence, both oral and documentary, it came to the conclusion, that the contents of Power of Attorney had been fraudulently incorporated without any due authorisation only to deprive plaintiffs of their valuable rights. The appeal was allowed and the suit was decreed. The First Appellate Court recorded following findings:

(i). The contents of the two sale deeds executed by the Attorney on the day of the registration of the Power of Attorney is a relevant fact

against the defendants and showed their conduct to be malicious.

(ii). The sale deeds had been undervalued and did not reflect the market value. Even the guideline value was not reflected as a result of which the sale deeds were impounded.

(iii). The deficient stamp duty was paid in 1995 and 1997 to get the sale deeds regularised and be released, which was after nine and eleven years respectively from the date of its execution. This was also much later than institution of the suit by the plaintiffs in 1991.

(iv). The sale consideration reflected in the sale deeds was also much less than the guideline value, and even if it was paid to the plaintiffs, it was not a reasonable consideration for the land in suit.

(v). The defendants had taken undue advantage of their illiteracy and resourcefulness to deprive the plaintiffs of their valuable land, they being illiterate and simple rustic villagers.

(vi). The revenue documents produced by the defendants were from a period, post institution of the civil suit.

(vii). The original Power of Attorney was never produced, and it was alleged that the same had been lost.

(viii). The defendants failed to prove that the plaintiffs knowingly and willingly, having understood the contents of the Power of Attorney, had executed the same.

(ix). The principle of *non est factum* was decided in favour of the plaintiffs.

10. The judgement and order of the First Appellate Court dated 13.02.2002 was carried in Second Appeal before the High Court and was registered as Second Appeal No.648 of 2002. The High Court framed the following question of law: "Whether the first appellate court, in the absence of any issue having been framed by the trial court or by itself and also in the absence of relevant pleadings concerning the plea of *non est factum* relating to Ex. A1, was justified in giving a finding in favour of the plaintiffs?" and decided the same in favour of the defendants.

11. The High Court was of the view that before the Trial Court, there was neither any pleading nor any issue was framed with regard to the plea of *non est factum* and as such the First Appellate Court committed an error in determining the said plea in favour of the plaintiffs. The High Court, vide judgement dated 21.11.2008, accordingly allowed the appeal, and after setting aside the judgement of the First Appellate Court, restored the order of the Trial Court and dismissed the suit. Against the said order, the present appeal has been preferred by the plaintiffs.

12. We have heard learned counsel for the parties and perused the material on record.

13. The submissions of the learned counsel for the appellants are briefly summarised as under:

    (i). The case of the plaintiffs, from the very beginning, was to the effect that they had only executed the Power of Attorney for the limited purpose of development of the land

by dividing it into smaller plots and to obtain necessary permissions from the authorities.

(ii). They had never executed the Power of Attorney authorizing the defendant no. 2 to sell, to create mortgage, to execute gift deed, settle the land in dispute or to sign the transfer of grant of Patta. Such clauses had been mischievously and surreptitiously added by the defendant no. 2 taking undue advantage of the simplicity and illiteracy of the plaintiffs.

(iii). The plaintiffs never handed over the possession of the land in dispute and throughout continued in possession of the same.

(iv). The conduct of the Attorney, defendant no. 2, in transferring the land to his own father and brother on the very day the Power of Attorney was registered shows that there was malice on the part of the Attorney. The defendant no. 2 was apparently apprehensive that in case if the plaintiffs came to know of the contents of the Power of Attorney, which authorises defendant no. 2

to sell the land, they would have cancelled it. So, without taking any chances as any delay would frustrate his malicious intent, he executed the sale deed in favour of his own father and brother for a nominal amount.

(v). The First Appellate Court had rightly determined the plea of *non est factum* as one of the points of consideration, which was based upon the pleadings and did not require any specific issue to be framed but the same would be squarely covered as part of the issues already framed.

(vi). The High Court fell in error in holding that there was no pleading, which is contrary to the record.

(vii). Reliance has been placed upon the following judgements by learned counsel for the appellant in support of his submissions:

a) **Smt. Bismillah** vs. **Janeshwar Prasad and Others**[1],

[1] (1990) 1 SCC 207

b) **Sri Sinna Ramunuja Jeer and Others** vs. **Sri Ranga Ramanuja Jeer and Another**[2],

c) **Randhir Kaur** vs. **Prithvi Pal Singh and Others**[3].

14. On the other hand, submissions advanced on behalf of the respondents are summarised as under:

(i). The plaintiffs, having admitted the execution of the Power of Attorney, its contents could not be disputed.

(ii). The plaintiffs, having pleaded that they acquired knowledge of the Power of Attorney in 1988, did not take any action for either revoking the Power of Attorney or for cancellation of the sale deed, or any criminal action, and it was almost after three years that the suit was instituted in the year 1991.

(iii). The First Appellate Court did not reverse the findings of the Trial Court that the sale consideration of Rs. 12,000/- was paid to the

[2] (1962) 2 SCR 509
[3] (2019) 17 SCC 71

plaintiffs. The finding on possession was in favour of the defendants, as the plaintiffs did not produce any documentary evidence to prove their possession, whereas the defendants had filed documents (D-03 to D-14) to establish their possession.

(iv). The plaintiffs had wrongly pleaded that they were illiterate, whereas in fact the High Court had recorded the finding that they are literate and were ably assisted by their brothers and cousins in executing the Power of Attorney. The plaintiffs did not plead any kind of fraud by the defendants.

(v). The Power of Attorney being a registered document, its contents would be deemed to be correct unless proven otherwise. There is a presumption of the correctness of the contents of the Power of Attorney.

(vi). The suit was not maintainable as no relief was claimed for setting aside the Power of Attorney or for cancellation of the sale deed.

(vii). The application of doctrine of *non est factum* would not arise in view of the plaintiff

admitting the execution of the Power of Attorney.

(viii). The plaintiff cannot turn around and take a contrary stand after having received the sale proceeds and handing over possession to the defendants.

(ix). The scope of the present appeal before this Court is very limited, and unless exceptional and special circumstances are shown to establish the perversity in the judgement of the High Court, no interference is called for. The appeal deserves to be dismissed.

(x). Reliance has been placed upon the following judgments in support of his submissions:

a) **Prem Singh & Ors. vs. Birbal & Ors.**[4],

b) **Pentakota Satyanarayana vs. Pentakota Seetharatnam**[5],

c) **ITC Limited vs. State of Uttar Pradesh & Ors.**[6],

d) **M.M.S. Investments, Madurai & Ors. Vs. V. Veerappan & Ors.**[7],

[4] 2006 (5) SCC 353
[5] 2005 (8) SCC 67
[6] 2011 (7) SCC 493
[7] 2007 (9) SCC 660

e) **I.S. Sikandar (dead) by LRs vs. K. Subramani & Ors.**[8],

f) **C. Chandramohan vs. Sengottaiyan (Dead) by LRs & Ors.**[9],

g) **Cauvery Coffee Traders, Mangalore vs. Hornor Resources (International) Company Limited**[10],

h) **Taherakhatoon (D) by LRs. vs. Salambin Mohammed**[11]

15. As the High Court proceeded to record a finding that there was neither any pleading nor any issue framed regarding the plea of *non est factum,* it would be appropriate to first deal with the contents of the plaint.

16. It is specifically averred in paragraph No.6 of the plaint that only intention for executing the Power of Attorney in favour of defendant No.2 was for developing the property in question into smaller plots and to get necessary approvals for the same from the relevant authorities. In paragraph 10 of the plaint, it is clearly stated that the plaintiffs

[8] 2013 (15) SCC 27
[9] 2000 (1) SCC 451
[10] 2011 (10) SCC 420
[11] 1999 (2) SCC 635

were illiterate and had no means to get the above exercise carried out and as the defendant No.2 was well versed in dealing with Government Authorities, he could have helped them in developing the plots. Further, it was specifically stated in paragraph 10 that after reading the documents in 1991, the plaintiffs realized that the defendant had two additional clauses incorporated authorizing him to sell, gift, settle the plots in question and also to execute wherever necessary transfer of Patta Deeds. This was never the intention. These two additional rights recorded in the Power of Attorney deed was never intended nor conveyed nor informed. It is also stated in the plaint that taking advantage of illiteracy and simplicity of the plaintiffs, such rights have been incorporated in the Power of Attorney.

17. A plea of *non est factum* can be taken by an executor or signatory of the deed to plead that the said document is invalid as its executor/signatory was mistaken about its character at the time of executing/signing it. It is

a latin maxim which literally means "it is not the deed." A plea of *non est factum* is a defence available in Contract Law allowing a person to escape the effect of a document which she/he may have executed/signed.

18. As already noted above, the plea of *non est factum* basically means, "it is not my deed." The said plea has been a subject matter of consideration of this court in the case of **Bismillah v Janeshwar Prasad (supra)**. In the said case, the plaintiff/appellant therein had claimed herself to be a Pardanashin lady and on the representation of the defendant/respondents, had appointed them as agent to manage the estate under a written document which was drafted in Hindi, a language not known to her. Later on, she discovered that it contained an unauthorized clause empowering sale of properties. Taking advantage of the same, the said agents had executed fraudulent and elusive sale of the said property. The said case set up the plaintiff/appellant was considered and dealt with in paras 12 and 13 of the report. A further issue

which this Court considered in the said case was a distinction between fraudulent mis-representation as to the character of the document and fraudulent misrepresentation as to the contents thereof. Such defense of *non est factum* was held to be available only where the mistake was as to the very nature or character as to the transaction. This Court also relied upon an earlier decision in the case of **Ningawwa v. Byrappa**[12]. This Court further placed reliance upon the judgement of the House of Lords in case of **Saunders v Anglia Building Society**[13] to fine tune the distinction between the document being void or voidable. Paras 11 to 15 of **Bismillah (supra)** are reproduced hereinunder:

> "11. The assumption underlying the reasoning of the High Court is that if the action had really been one based on the need for the cancellation of the deeds, without which possession could not be granted, the civil court would have had jurisdiction. The cause of action in the appellant's suit does admit of being brought within this class of cases.

[12] AIR 1968 SC 956
[13] (1970) 3 ALL ER 961

12. The common law defence of *non est factum* to actions on specialities in its origin was available where an illiterate person, to whom the contents of a deed had been wrongly read, executed it under a mistake as to its nature and contents, he could say that it was not his deed at all. In its modern application, the doctrine has been extended to cases other than those of illiteracy and to other contracts in writing. In most of the cases in which this defence was pleaded the mistake was induced by fraud; but that was not, perhaps, a necessary factor, as the transaction is "invalid not merely on the ground of fraud, where fraud exists, but on the ground that the mind of the signor did not accompany the signature; in other words, that he never intended to sign, and therefore, in contemplation of law never did sign, the contract to which his name is appended"

13. Authorities drew a distinction between fraudulent misrepresentation as to the *character* of the document and fraudulent misrepresentation as to the *contents* thereof. It was held that the defence was available only if the mistake was as to the very nature or character of the transaction.

14. In Foster v. Mackinnon [(1869) LR 4 CP 704 : 38 LJCP 310] , Mackinnon, the defendant was induced to endorse a bill of

exchange on the false representation that it was a guarantee similar to one he had signed on a previous occasion. He was held not liable when sued even by an innocent endorsee of the bill. Byles, J. said:

> "... The defendant never intended to sign that contract or any such contract. He never intended to put his name to any instrument that then was or thereafter might become negotiable. He was deceived, not merely as to the legal effect, but as to the 'actual contents' of the instrument."

15. This decision was referred to with approval by this Court in Ningawwa v. Byrappa [(1968) 2 SCR 797 : AIR 1968 SC 956] . It was observed: (SCR pp. 800-01)

> "It is well established that a contract or other transaction induced or tainted by fraud is not void, but only voidable at the option of the party defrauded. Until it is avoided, the transaction is valid, so that third parties without notice of the fraud may in the meantime acquire rights and interests in the matter which they may enforce against the party defrauded."

This would be a voidable transaction. But the position was held to be different if

the fraud or misrepresentation related to the character of the document. This court held: (SCR p. 801)

> "*The legal position will be different if there is a fraudulent misrepresentation not merely as to the contents of the document but as to its character.* The authorities make a clear distinction between fraudulent misrepresentation as to the character of the document and fraudulent misrepresentation as to the contents thereof. With reference to the former, it has been held that the transaction is void, while in the case of the latter, it is merely voidable."
>
> (emphasis supplied)

However the House of Lords in Saunders v. Anglia Building Society [1971 AC 1004 : (1970) 3 All ER 961] reviewed the law and held that the essential features of the doctrine, as expressed by Byles, J. in Foster v. Mackinnon [Chitty on Contracts, 25th edn., p. 341] , had been correctly stated. Lord Reid, however, observed: (AC headnote at p. 1005)

> "The plea of *non est factum* could not be available to anyone who signed without taking the trouble to find out at least the general effect of the document. Nor could it be available to a person whose mistake was really a

> mistake as to the legal effect of the document. There must be a radical or fundamental difference between what he signed and what he thought he was signing.""

19. The ingredients of the plea of *non est factum* as laid down not only in the case of **Bismillah (supra)** are existing in the present case, but also the three parameters as can be deduced from **Saunders(supra)** were in existence in the present case as well. The aforementioned test for a successful plea of *non est factum* requires that:

A. The person pleading *non est factum* must belong to "class of persons, who through no fault of their own, are unable to have any understanding of the purpose of the particular document because of blindness, illiteracy or some other disability". The disability must be one requiring the reliance on others for advice as to what they are signing. As Lord Pearson had aptly put:

> "*In my opinion, the plea of non est factum ought to be available in a proper case for the relief of a person who for permanent or temporary reasons (not limited to*

blindness or illiteracy) is not capable of both reading and sufficiently understanding the deed or other document to be signed. By "sufficiently understanding" I mean understanding at least to the point of detecting a fundamental difference between the actual document and the document as the signer had believed it to be."

B. "The "signatory must have made a fundamental mistake as to the nature of the contents of the document being signed", including its practical effects. Lord Wilberfore has succinctly put this aspect:

"In my opinion, a document should be held to be void (as opposed to voidable) only when the element of consent to it is totally lacking, that is, more concretely, when the transaction which the document purports to effect is essentially different in substance or in kind from the transaction intended"

C. The document must have been radically different from one intended to be signed. As Lord Reid Remarked in the judgement:

> *"There must, I think, be a radical difference between what he signed and what he thought he was signing — or one could use the words "fundamental" or "serious" or "very substantial." But what amounts to a radical difference will depend on all the circumstances."*

All these three criteria are clearly pleaded and made out in the instant case as well.

20. In the present case, the defendant respondent had taken a plea which the High Court had given due consideration that the plaintiff appellant had not sought any relief either for declaration of the Power of Attorney as void as also the cancellation of the sale deeds. Law is well settled that where it is alleged that the document of sale is void, then no cancellation would be necessary and such a document can be ignored under law. Cancellation of a sale deed would be necessary only where it is alleged to be voidable on facts. The present case the fraudulent mis-representation was not only to the contents of the document but also to the character of the document. Thus, the reasoning given by the High

Court contrary to the settled legal position cannot be sustained.

21. From a perusal of the plaint, it is more than clear that the plea of *non est factum* was well pleaded, in clear and strict terms. Whether or not the plaintiffs were able to prove it would be a different question but the fact that it was pleaded is more than apparent. The High Court was thus not right in recording the finding that plaintiffs did not plead with respect to the plea of *non est factum.*

22. It would be appropriate at this stage itself to refer to the settled legal position on the above aspect. This Court in the case of **Bhagwati Prasad vs. Chandramaul**[14] very aptly put that the question for the Courts to consider in such matters is whether the parties knew that the matter in question was involved and whether they led evidence about it. We may profitably extract para 10 of the aforesaid report:

[14] AIR 1966 SC 735

"10. But in considering the application of this doctrine of the facts of the present case, it is necessary to bear in mind the other principle that considerations of form cannot over-ride the legitimate considerations of substance. If a plea is not specifically made and yet it is covered by an issue by implication, and the parties knew that the said plea was involved in the trial, then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it if it is satisfactorily proved by evidence. The general rule no doubt is that the relief should be founded on pleadings made by the parties. But where the substantial matters relating to the title of both parties to the suit are touched, though indirectly or even obscurely, in the issues, and evidence has been led about them, then the argument that a particular matter was not expressly taken in the pleadings would be purely formal and technical and cannot succeed in every case. What the Court has to consider in dealing with such an objection is : did the parties know that the matter in question was involved in the trial, and did they lead evidence about it? If it appears that the parties did not know that the matter was in issue at the trial and one of them has had no opportunity to lead evidence in respect of it, that undoubtedly would be a different matter. To allow one party to rely upon a matter in respect of which the other party did not lead evidence and has had no opportunity to lead evidence, would introduce considerations of prejudice, and in doing justice to one party, the Court cannot do injustice to another."

23. The said ratio has been followed by this Court in 2008, by a two-judge Bench in the case of Bachhaj Nahar vs. Nilima Mandal and Another[15]. This Court in clear terms stated the object and purpose of pleadings and issues. Para 12 of the said report is reproduced hereinunder:

> "12. The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its consideration. This Court has repeatedly held that the pleadings are meant to give to each side intimation of the case of the other so that it may be met, to enable courts to determine what is really at issue between the parties, and to prevent any deviation from the course which litigation on particular causes must take."

24. It would be relevant to refer to the issues framed by the Trial Court, as the High Court also observed that no issue on the plea of *non est factum* was framed by the Trial Court.

[15] (2008) 17 SCC 491

25. The Trial Court had framed the following four issues:

> "(i) Whether the plaintiffs are the absolute owner of the suit property?
> (ii) Whether the plaintiffs are in possession and enjoyment of the suit property?
> (iii) Whether the plaintiffs are entitled for the decree as prayed for?
> (iv) To what relief the plaintiffs are entitled?"

26. The first two issues would cover the issue of *non est factum* as an integral part of it when the plaintiffs claimed to be the absolute owners thereby denying not only the correctness of the Power of Attorney but also subsequent execution of the sale deed by the Attorney (defendant No.2) in favour of his own father and brother on the date of the registration of the deed of Attorney. Even otherwise once evidence is led with respect to the pleadings, non-framing of issues could not have proved fatal so as to record dismissal of the suit. The plaintiff No.1, who had entered the witness box, had fully supported his pleadings, as per the plaint. The First Appellate Court proceeded to deal with the same or, in other words, proceeded to consider the pleadings as

also the evidence led on record to arrive at the finding that the contents of the Power of Attorney were not as per the understanding between the plaintiff and the defendant No.2.

27. The conduct of defendant No.2, the Attorney would also draw an adverse inference against the defendant and an inference in favour of the plaintiffs' pleading. The defendant No.2, on the date the Power of Attorney got registered, proceeded to transfer the land in question in favour of his father and brother for a highly underestimated value much less from the guideline value what to say of the market value. The market value as alleged would be more than Rs.3 Lakhs at the relevant time. The guideline value was estimated to be Rs.22,500/- whereas the transfer was affected for a consideration shown as Rs.12,000/-. The defendant failed to explain this conduct of his of being in such a haste to transfer the property on the same day to his own father and brother. The deficiency in stamp duty due to under valuation was also not cleared as the document had been impounded by the Registering Authority and it was after nine to

eleven years that the deeds were got released after paying the stamp duty, as per the value determined by the Assessing Authority. Apparently, the defendants were waiting for the outcome of the suit and in case if they were to lose, they would not like to invest or spend any further amount on stamp duty so they chose not to pay till almost the Trial Court dismissed the suit.

28. The Power of Attorney did not confer possession on the defendant No.2. The plaintiffs continued to assert that they were in possession whereas the defendants claimed to be in possession pursuant to the sale deed. A finding has also come to the effect that the consideration of Rs.12,000/- was paid to the plaintiffs, which the plaintiffs have denied. The question would be as to whether the consideration was just and adequate for the property which was transferred by the Attorney holder.

29. The consideration has not been paid either in the bank account or by Cheque or Demand Draft but in cash, so, therefore, whether it was actually

paid or not would be dependent upon the acceptance of either of the oral statements by the plaintiffs or the defendants. The statement of the defendants considering their conduct, would be placed at a lesser pedestal in terms of its genuineness as compared to that of the plaintiffs. There is no documentary evidence as such (receipt or any such thing) signed by the plaintiffs of having received any consideration. Thus, possession cannot be said to have been validly transferred to the defendant and the lawful possession would still remain with the plaintiff. The First Appellate Court had appreciated and analyzed the evidence on record, both oral and documentary, to record a finding that plea of *non est factum* was proved.

30. The case law relied upon by the defendant-respondents are basically for the proposition that a registered document be presumed to be correct not only of its execution but also of its contents. As already discussed above, once the First Appellate Court, after appreciating and analysing the evidence on record came to the conclusion

that the plea of *non est factum* was proved, the said finding, being a finding of fact, ought not to have been interfered by the High Court in Second Appeal. The Power of Attorney, having been found to be invalid, any further action taken pursuant to it, cannot also be held to be valid. Therefore, the judgments relied upon by the defendant respondents are of no assistance to them.

31. The High Court, while exercising its power under Section 100 of the Code of Civil Procedure, 1908, exceeded its jurisdiction in disturbing the pure findings of fact and that too on incorrect appreciation and reading of the pleadings. Non-framing of an issue, which is otherwise covered in a broader issue and for which there was sufficient pleading and evidence, the suit could not have been dismissed on that ground.

32. For all the reasons recorded above, the appeal succeeds and is allowed. The impugned judgment of the High Court is set aside and that

of the First Appellate Court is maintained. The suit of the appellants stands decreed.

33. No order as to costs.

34. Pending applications, if any, stand disposed of.

.....J.
(VIKRAM NATH)

.....J.
(AHSANUDDIN AMANULLAH)

NEW DELHI
AUGUST 17, 2023