

(2006) 09 MP CK 0002
In the Madhya Pradesh High Court

Smt. Shamim Afroz and Others

APPELLANT

Vs

Mehfooz-ul Hasan and Others

RESPONDENT

Date of Decision : 06-09-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Contract Act, 1872 — Section 25, 29
Evidence Act, 1872 — Section 114, 65
Negotiable Instruments Act, 1881 (NI) — Section 118

Citation : AIR 2007 MP 19 : (2007) 1 MPLJ 103

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajendra Menon, J.

This is plaintiffs second appeal u/s 100, CPC assailing the concurrent findings recorded by the Courts below and dismissing the suit filed by the plaintiffs.

The appeal was admitted on 2nd January 2006 for consideration of the following three substantial questions of law:

(i) Whether the Court below has erred in holding that the sale-deed executed by defendant No. 1 in favour of defendant No. 2 on the basis of power of attorney is valid when the power of attorney is not filed in the Court to show that the said document contains powers to sell the property?

(ii) Whether the sale is void in absence of any consideration? and

(iii) Whether the Court below has erred In dismissing the suit as barred by limitation?

Property in question, which is the disputed property in the present suit consists of various land situated in Village Baike Tehsil Ganj Basoda District Vifisha. The total area of the land is 1.207 hectares and particulars of the same are given in

para 2 of the memorandum of appeal. The said property was the joint property of Wahid-ul-Hasan and Mehfooz-ul Hasan, who are real brothers. Apart from these two persons one Sharif-ul Hasan is the third brother who is also having some share in the property.

Plaintiffs hereinabove are the sons and daughters of Wahid-ul-Hasan. They filed the suit against their uncle Mehfooz-ul-Hasan and his son Maqsood Ali, who are defendant Nos. 1 and 2 respectively before the Courts below. It was the case of plaintiffs that Wahid-ul-Hasan was not staying in Ganj Basoda, he was a teacher in the Education Department and he was staying in Ujjain with his family members. The said Wahid-ul Hasan had given a power of attorney to his brother Mehfooz-ul Hasan on 31st May 1984 for looking after the property. It was the specific case of the plaintiffs that the power of attorney given to Mehfooz-ul Hasan did not authorize him to sell the property, it was only executed for delegating him power of managing the property. Plaintiffs contend that in spite of the fact that, Mehfooz-ul Hasan was not authorized to sell any of the property, he alienated the property vide various sale deeds to various persons so also to his son Maqsood Ali on 11-7-1990 for a consideration of Rs. 14,500/- (Rupees fourteen thousand five hundred only). Inter alia contending that Mehfooz-ul Hasan was not authorized to sell the property, the sale made by him is illegal and not binding on the plaintiffs suit was filed for restoration of possession and for declaration of the sale deeds as null and void and not binding on the plaintiffs.

Suit has been dismissed by both the Courts and, therefore, plaintiffs are before this Court in this appeal u/s 100, CPC.

In the suit initially Mehfooz-ul Hasan was impleaded as defendant No. 1 and Maqsood Ali was impleaded as defendant No. 2. However, during the pendency of the suit Mehfooz-ul Hassan died on 12-10-2002 and, therefore, his legal heirs have been brought on record. During his life time this defendant filed a written statement on 28-1-2002 and submitted that the power of attorney did not authorize him to sell the property. After his death his legal heirs have again filed a separate written statement and submitted that their father was not authorized to sell the property and the power of attorney only gave him a right to look after the property and manage it. However, defendant No. 2 Maqsood Ali denied all these contentions and submitted that the power of attorney authorized his father to sell the property. Exhibit P/8 sale deed dated 11-7-1990 was executed in his favour, he had paid a consideration of Rs. 14,500/- (Rupees fourteen thousand five hundred only) to his father and the sale was made with the knowledge of Wahid-ul Hasan. It was stated by him that Wahid-ul Hasan had died on 11-2-96 and during his life time apart from the sale deed (Ex. P/8) executed to favour of defendant Maqsood Ali, sale deeds (Ex. P/9 to P/12) were executed by Mehfooz-ul Hasan In the name of various other persons on 13-12-1984, 9-5-1986, 14-10-1986 and 4-6-1990. It was stated by him that Wahid-ul Hasan was in know of these transactions and during his life time he never objected to the execution of these sale deeds. It was stated that, all the sales were made with

the consent of Wahid-ul Hasan, no case for grant of any decree is made out. In support of the rival contentions four witnesses were examined on behalf of the plaintiffs and three witnesses examined on behalf of the defendant No. 2. The witnesses examined are Rais Khan (P.W. 1), Iqbal Hasan (P.W. 2) son of Wahid-ul-Hasan plaintiffs himself an attorney holder for all the other plaintiffs, Parvat Singh (P.W. 3) and Wahid Ali (P.W. 4). On behalf of the defendants Maqsood Ali (D.W. 1), Ibrahim (D.W. 2) and Jiya-ul Hasan (D.W. 3) had been examined.

It is admitted fact that suit in question was filed on 15-3-1997 and Wahid-ul Hasan died on 11-2-1996, in the plaint it is stated that in the year 1995, Wahid-ul Hasan had knowledge about the illegal sales made by his brother Mehfooz-ul Hasan, and, therefore, he has written to the Collector and the Authorities of the Revenue Department and the Municipal Council for cancellation of sale deed by registered letters but the said documents are not available on record. The so called power of attorney dated 31-5-1984 is also not filed and is not available on record.

Iqbal Hasan (P.W. 2) submits that the power of attorney was executed, it is dated 31-5-1984 and it was registered before a Notary at Bhopal. It is stated by him that his father late Wahid-ul Hasan signed on the blank stamp papers and gave it to Mehfoozul Hasan for the execution of the power of attorney. Mehfooz-ul Hasan is said to have gone to Bhopal for obtaining signatures of the third brother Sharif-ul Hasan, he is said to have got the power of attorney typed and notarized at Bhopal. It is the case of the plaintiffs that even though instruction was given to Mehfooz-ul Hasan only to prepare a power of attorney for management of the property. He had fraudulently used the power of attorney for sale of the property even without there being any stipulation in this regard. Both the Courts have meticulously analyzed each and every aspect of the matter and after analyzing the material available on record findings arrived at is that, plaintiffs have failed to prove that the power of attorney did not authorize Mehfooz-ul Hassan to sell the property. Suit has been dismissed by both the Courts on the ground that plaintiffs have failed to prove their case. The suit was barred by time and consideration of Rs. 14,500/- (Rupees fourteen thousand five hundred only) is proved to have been paid by Maqsood Ali, while sale deed (Ex. P/8) was executed on 11-7-1990.

Shri R.D. Jain Sr. Counsel taking me through the statement of witnesses so also the reply filed by defendant No. 1 and thereafter his legal representative emphasized that once defendant No. 2 and his legal representative have admitted that the power of attorney was not for sale of the property. Both the Courts committed grave error in dismissing the suit. Taking me through the statements of various witnesses Shri Jain submitted that in the absence of authority given for alienation of property, sale deed executed on the basis of power of attorney is wholly unsustainable and both the Courts have committed grave error in not quashing the sale made on the basis of such a power of attorney. Thereafter, it was submitted by him that Article 59 of the Limitation Act

will not apply in the present case. The present case is covered by Article 94 and, therefore, the Courts below committed grave error in holding that the suit to be barred by time. Thereafter, referring to Section 25 of the Indian Contract Act, Shri Jain emphasized that sale without consideration is unsustainable and, therefore, all the three questions framed have to be answered in favour of the plaintiffs. In support of his contention, apart from referring to the aforesaid provisions, he placed reliance on the following judgments:

- (i) Timblo Irmaos Ltd., Margo Vs. Jorge Anibal Matos Sequeira and Another, .
- (ii) Electric Construction and Equipment Co. Ltd. v. Jagjeet Electronic Work Sirsa reported in AIR 1994 Delhi 363 (sic).
- (iii) Syed Abdul Khader Vs. Rami Reddy and Others, .
- (iv) Roop Kumar Vs. Mohan Thedani, .
- (v) Prem Singh and Others Vs. Birbal and Others, .

It is accordingly submitted by Shri Jain that in the facts and circumstances of the case both the Courts committed grave error in dismissing the suit and he, therefore, prays for decreeing of the suit.

Refuting the aforesaid contentions Shri V.G. Khot submitted that findings of fact arrived at by both the Courts do not call for any interference, now by this Court in this appeal u/s 100, CPC Accordingly he prays for dismissal of the appeal.

Having heard learned Counsel for the parties at length and perusing the record, it is seen from the records that the property in question was jointly held by the three brothers namely Wahid-ul Hasan, Mehfoozul Hasan and Sharif-ul Hasan. Wahid-ul Hasan was staying in Ujjain and he was working in the Education Department, Sharif-ul-Hasan was staying in Bhopal and third brother Mehfooz-ul Hasan, was staying in the village and looking after the property. According to the plaintiffs and Iqbal Hasan (P.W. 2) their father had not executed the power of attorney on 31-5-1984 authorising Mehfooz-ul Hasan to alienate the property. However, the power of attorney dated 31-5-1984 is not available on record. Iqbal Hasan in his statement has only stated that his father had signed on the blank stamp papers and thereafter this power of attorney was notarized by Mehfooz-ul Hasan at Bhopal. He further states that when his father Wahid-ul Hasan was alive, in the year 1995 he was aware of the illegal transactions made by Mehfooz-ul Hasan. He had sent various letters and representations to the Collector, the Office of Registrar and the Authority of Municipal Council. But he is unable to produce any document in support of this contention. A peculiar fact that is evident in this case is that all the averments are made orally by the plaintiffs and their witnesses. Neither the power of attorney dated 31-5-1984 nor any other communication made by Wahid-ul Hasan were produced before the Court, except for contending that the documents are not available with the plaintiff none of the relevant and material documents are produced. Both the Courts have taken a serious note of this fact. It had been held by the Courts that except for making

certain oral statement beyond the pleading material documents are not being produced. Once, it is the case of the plaintiffs that the defendant No. 1 Mehfooz-ul Hasan had acted beyond the power granted to him, it was for the plaintiffs to produce the power of attorney dated 31-5-1984 and prove it not only was the original power of attorney withheld, but a photocopy produced by Iqbal Hasan was never proved by adducing secondary evidence as contemplated u/s 65 of the Indian Evidence Act, nor any effort made to get the original power of attorney summoned from Mehfooz-ul Hasan.

Merely because Mehfooz-ul Hasan original defendant No. 1 and thereafter his legal heirs had admitted the fact with regard to no power granted for alienation of the property judgment and decree adverse to defendant No. 2 Maqsood AH, could not be passed. It has been held by the Court below that this admission made by defendant No. 1 cannot be used against the defendant No. 2. It is also seen from the records that defendant No. 2 Mehfooz-ul Hasan died on 12-10-2002, the suit was filed on 15-8-1997 and between 15-3-1997 till the death of this defendant no action was taken for filing any application, seeking production of the power of attorney from this defendant during his life time, for reasons best known to the plaintiffs they remained satisfied by adducing oral evidence without taking any steps for getting the power of attorney produced and proved in accordance with law. In the absence of the power of attorney, being produced, both the Courts have analyzed the evidence available on record and after considering the circumstances established from the oral evidence finding recorded is that plaintiffs have not proved their case. In doing so, I find that the Courts have not committed any error. Plaintiffs have not given any explanation as to how the best evidence available namely the power of attorney is not produced by them nor the contents thereof proved by adducing secondary evidence when photocopy was available. While dealing with the question of production of best evidence available in the case of Roop Kumar Vs. Mohan Thedani, Supreme Court has considered the question and in paras 16 and 17, it is observed as under:

The practical consequence of integration is that its scattered parts, in their former and inchoate shape, have no longer any jural effect; they are replaced by a single embodiment of the act. In other words, when a jural act is embodied in a single memorial all other utterances of the parties on the topic are legally immaterial for the purpose of determining what are the terms of their act. This rule is based upon an assumed intention on the part of the contracting parties, evidenced by the existence of the written contract, to place themselves above the uncertainties of oral evidence and on a disinclination of the Courts to defeat this object. When persons express their agreements in writing, it is for the express purpose of getting rid of any indefiniteness and to put their ideas in such shape that there can be no misunderstanding, which so often occurs when reliance is placed upon oral statements. Written contracts presume deliberation on the part of the contracting parties and it is natural they should be treated with careful consideration by the Courts and with a disinclination to disturb the

conditions of matters as embodied in them by the act of the parties. (See McKelvey's Evidence p. 294). as observed in Greenleaf's Evidence, p. 563, one of the most common and important of the concrete rules presumed under the general notion that the best evidence must be produced and that one with which the phrase "best evidence" is now exclusively associated is the rule that when the contents of a writing are to be proved, the writing itself must be produced before the Court or its absence accounted for before testimony to its contents is admitted.

It is likewise a general and most inflexible rule that wherever written instruments are appointed, either by the requirement of law, or by the contract of the parties, to be the repositories and memorials of truth, any other evidence is excluded from being used either as a substitute for such instruments. or to contradict or alter them. This is a matter both of principle and policy. It is of principle because such instruments are in their own nature and origin, entitled to a much higher degree of credit than parol evidence. It is of policy because it would be attended with great mischief if those instruments, upon which men's rights depended, were liable to be impeached by loose collateral evidence. (See Starkie on Evidence, p. 648).

(Emphasis supplied)

On consideration of the principles laid down in the aforesaid judgment, it is clear that it was for the plaintiffs to produce the best evidence available and prove the contents of the power of attorney. This have not been done so, no presumption can be drawn in favour of the plaintiffs for the purpose of decreeing the suit. It was for the plaintiffs to prove by leading cogent evidence with regard to facts stated by them and as they have failed to do so. Learned Courts below have not committed any error in the matter.

Supreme Court in the case of Kundan Lal Rallaram v. Custodian, Evacuee Property, Bombay AIR 1961 SC 1316 while considering the question with regard to relevant evidence being withheld by the plaintiff and presumption to be drawn in a proceeding under the Negotiable Instruments Act, 1881 has laid down the following principle (para 7):

The same rule was reaffirmed in Rameshwar Singh v. Bajit Lal AIR 1929 PC 95 and was approved by this Court in Hiralal and Others Vs. Badkulal and Others, . These three decisions lay down that it is the duty of a party to a suit in possession of important documents to produce them in Court, and if that duty is not discharged the Court may as well draw the presumption which it is entitled to do u/s 114 of the Evidence Act. A division bench of the Madras High Court in Narayana Rao v. Venkatapayya ILR (1937) Mad 299 : AIR 1937 Mad 182 considered the interaction of the provisions of Section 118 of the Negotiable Instruments Act and Section 114 of the Evidence Act in the matter of rebuttal of the presumption under the former section. After considering the earlier decisions, including those of the Privy Council, Varadachariar, J. summarized the law at p.

311 (of ILR Mad) at p. 187 of AIR thus.

(Emphasis supplied)

It has to be borne in mind that, when evidence has been adduced on both sides, the question of onus is a material or deciding factor only in exceptional circumstances, of Yellappa Ramappa Naik v. Tippanna 56 MLJ 287 : AIR 1929 Mad 8 and that even the onus u/s 118 of the Negotiable Instruments Act need not always be discharged by direct evidence adduced by the defendant; Kunwar Muhammad Shafi Khan Vs. Kunwar Muhammad Moazzam Ali Khan, , Singar Kunwar Vs. Basdeo Prasad and Others, and Bishambar Das v. Ismail AIR 1933 Lah 1029. Not merely can the Court base its conclusion on the effect of the evidence taken as a whole but it may also draw adverse inferences against a party who being in a position to adduce better evidence deliberately abstains from doing so AIR 1917 PC 6 Gunuswami Nadan v. Gopalaswami Odayar ILR 42 Mad 629 : AIR 1919 Mad 444 and S.K. Raghavendra Rao Vs. Venkatasami Naickan and Others, .

We respectfully accept the correctness of the said observations.

Apart from considering the facts and circumstances of the case in the light of the aforesaid legal principle a perusal of the findings recorded by both the Courts and the reasons thereof indicates that learned Court had given various reasons for disbelieving the fact with regard to there being no delegation of power for sale of the property. It has been held by both the Courts that the power of attorney is said to have been executed on 31-5-1984 on the basis of this power of attorney, sale deeds (Ex. P9 to PI 2) were executed on 13-12-1984, 5-9-1986, 14-1-1986 and 4-6-1990, apart from the sale deed (Ex. P8) dated 11-7-1990 executed in favour of defendant No. 2 Maqsood Ali on 11-7-1990. It has been indicated by the Courts that plaintiffs have come out with a case that after the sale deed was executed on 31-5-1984, partition of the property took place and on partition the power of attorney automatically became nullified. It has been indicated by the Courts that no date of partition is indicated. Even though Iqbal Hasan (P.W. 2) in his statement submits that after partition was made the fact was intimated to authorities concerned no document and record is shown facts with regard to partition of the property or intimation with regard to partition and cancellation of the power of attorney. It is indicated by the Courts, that, except for making oral statement plaintiffs have not produced the relevant documents by which they say communication about partition and cancellation of power of attorney was made. Even the dates on which the partition was executed, dates and particulars of letters and complaints are not indicated at all in the plaint or in the statements of witnesses. Exhibit P. 2, P. 3 and P. 5 are the revenue records for the year 1990-91, 1994-95, 1998-99 to 2000-01 respectively and according to Iqbal Hasan (P.W. 2) the entire property measuring 1.207 hectares was in the name of his. father Wahid-ul Hasan till his death i.e. on 11-2-1996. After considering these documents finding recorded is that the total area in these documents comes to only 0.159 hectares and not 1.207 hectares as alleged.

That apart, it is indicated by the learned Court that plaintiffs contend that till the death of their father in the year 1996, Wahid-ul Hasan used to come to Ujjain and give the agricultural produced in the field to their father i.e. wheat and other products. Witness of the plaintiffs Parwat Singh (P.W. 3) also submits that up to the year 1994-95 various crops were grown in the field. After considering the revenue records (Ex. P. 9. P. 3 and P. 5) finding recorded by the Courts below are that in these revenue, records for the years 1990-91 to 1994-95 and thereafter from 1998 to 2001, there is no mention of any crop grown in the field. Considering all these aspects claim made by the plaintiffs is disbelieved concurrently by both the Courts. It is also indicated by the Courts that even though Iqbal Hasan (P.W. 2) has stated various facts. All these facts are not pleaded by him in his evidence.

It is also indicated by the Courts below that plaintiffs contend and their witness Iqbal Hasan (P.W. 2) and Jiya-ul Hasan (D.W. 3) have submitted that after Wahid-ul Hasan affixed signatures in the blank stamp papers, Mehfooz-ul Hasan took the papers to Bhopal and got the signatures of Sharif-ul-Husan. Sharif-ul Hasan is still alive and there is nothing on record to indicate that he is not alive or dead. It has been held by the Courts below that Sharif-ul Hasan was an important witness as he had his share In the property, transfer of his share is also made illegally on the basis of the power of attorney, that being so he would have objected to the same. Neither Sharif-ul-Hasari is examined as a witness nor any reason is given as to why he has not submitted any objection to the illegal transactions made by Mehfooz-ul Hasan. Another factor which has been considered by the Courts below are that the property was jointly held by all the three brothers and if share in excess of that held by Mehfooz-ul Hasan was transferred by him illegally, then according to the plaintiffs themselves as partition has taken place, the brothers namely Wahid-ul Husan and Sharif-ul Hasan would have noticed transfer of their share in such an illegal manner and would have objected. According to the sale deeds (Ex. P. 9 to P. 12) property is said to have been sold to various individuals on 13-12-1984, 5-9-1986, 14-1-1986 and 4-6-1990 respectively. If sale of land had been made to different persons then at the time of partition the owners Wahid-ul Hasan and Sharif-ul Hasan would have come to know about these transactions and the silence on their part clearly indicates that the transactions were made with their consent. Considering the totality of the facts and circumstances of the case finding recorded is against the plaintiffs. It is the considered view of this Court that in the facts and circumstances of the case, a detailed analysis of the evidence is made and for reasons as indicated hereinabove dismissal of the suit cannot termed as illegal or erroneous in any manner whatsoever.

Once, it was the case of the plaintiffs that transfer made by defendant No. 1 is in excess of the power delegated to him, plaintiffs should have proved the same by leading cogent evidence. Not only cogent evidence adduced in this regard, even important documents like the power of attorney was never produced and important witness like Sharif-ul Hasan was also not produced for proving the

averments made in the plaint. Except for making oral statement unsupported by any documentary evidence plaintiffs wanted the suit to be decreed. This was not accepted by the Courts below and for the reasons as indicated hereinabove Courts below have rejected the suit. It is the considered view that the reasons given by the Courts below for accepting the contentions advanced by the plaintiffs cannot be termed as perverse or illegal in any manner whatsoever. Once the basis for making the claim, namely the power of attorney was not produced or its contents proved as per law, no case was made out by the plaintiffs for granting any relief. Even if the original power of attorney was not available with them, they could have proved it by leading secondary evidence. This was also not done nor was Sharif-ul Hasan summoned for giving evidence. The material available on record indicates that the transaction had taken place and as Mehfooz-ul Hasan, Wahid-ul Hasan and Sharif-ul Hasan were brothers none of them had any objection to the transaction made. That is why no objection or suit was filed by any of them, particularly by Wahid-ul Hasan during his life time. Considering the totality of these circumstances and on analysis of the entire material available on record, I find no error in the order passed by the Courts below dismissing the suit. Accordingly the first question framed has to be answered by holding that Courts below have not committed any error, as plaintiffs have failed to prove that the power to alienate, the property was not given by Wahid-ul Hasan to defendant No. 1 Mehfooz-ul Hasan.

As far as the next question with regard to validity of the sale on the ground of non-payment of consideration is concerned Section 29 of the Indian Contract Act relied upon by Shri R. D. Jain, is of no help to the plaintiffs in this case. Section 29 contemplates that transaction made without consideration is void. In the present case the sale deeds in question (Ex. P, 8 to P. 12) indicates that in all these sale deeds consideration is indicated. As far as consideration of 14,500/- (Rupees fourteen thousand five hundred only) indicated in sale deed (Ex. P. 8) dated 11-7-1990 is concerned statements of witnesses that is Maqsood AH (D.W. 1) and Ibrahim (D.W. 2) indicates that Maqsood Ali had paid 14,500/- (Rupees fourteen thousand five hundred only) to his father Mehfooz-ul Hasan for payment to Wahid-ul Hasan, that being so the sale cannot be termed to be one without consideration. If Mehfooz-ul Hasan had not transferred, the consideration to Wahid-ul Hasan that by itself will not effect the transaction as this fact will not bring the plaintiffs case within the purview of Section 29. Accordingly, it has to be held that defendant No. 2 Maqsood Ali has proved by leading evidence that he had paid sum of 14,500/- (Rupees fourteen thousand five hundred only) to defendant No. 1 in execution of the sale deed. (Ex. P. 8) dated 11-7-1990 and, therefore, it has to be held that the sale is not void as absence of consideration is not established. Accordingly, the second question is also answered against the plaintiffs.

As far as the third question is concerned once the question Nos. 1 and 2 framed are answered against the plaintiffs the question No. 3 becomes totally non-consequential. However, contention of Shri Jain to the effect that the limitation in

this case is governed by Article 94 of the Limitation Act and not by Article 59 is wholly misconceived. Article 94 of the Limitation Act on which reliance is placed by Shri Jain pertains to fixing a period of limit for setting aside transfer of immovable property comprised of Hindu, Muslim and Buddhist religious and charitable endowment made by manager thereof for valuable consideration. Present is not a case pertaining to transfer of any religious or charitable endowment made by a manager and, therefore, this article will not apply. Article 59 pertains to in filing of a suit for cancelling or setting aside judgment and decree and the period of limitation is three years. In the present case plaintiffs want the sale deeds executed on 11-7-1990 (Ex. P.8) and earlier to that vide (Ex. P. 9 to P. 12) to be quashed. It is their case that Wahid-ul Hasan came to know about the transactions only in the year 1995 and the plaintiffs contend that they came to know about it in the year 1997, both these statements are disbelieved by the trial Court and the Appellate Court and the Appellate Court has held that when the transfer was made in the year 1990 and when the revenue records indicates that no crops are available in the field even in the year 1994-95, statement of the plaintiffs is disbelieved and the finding recorded is that Wahid-ul Hasan knew about the transaction well before 1995 and, therefore, it has been held that the suit is beyond limitation. In doing so, I am of the considered view that the Courts below have not committed any error. Except for contending for Wahid-ul Hasan came to know about the transfer only in the year 1995 and the plaintiff in the year 1997, no material is produced to substantiate these contentions. It is unbelievable that Wahid-ul Hasan would not have known about the transfers, which were made on 13-12-1984, 5-9-1986, 14-1-1986 and 4-6-1990 respectively. All these sales were made vide (Ex. P. 9 to P 12) and none the persons buying the property are members of the family. If these persons have purchased the property by paying consideration, it can be assumed that they would have taking over possession of the property and started utilizing it. Once they were in possession of the property, it cannot be assumed that Wahid-ul Hasan or the plaintiffs were not in known to the facts. Under such circumstances finding recorded by the Courts to the effect that plaintiffs knew about the transaction much before 1995 is a valid finding and, I find no error in the same. Accordingly, the third question has to be answered against the plaintiffs by holding that the Courts below have not committed any error in dismissing the suit on the ground of limitation.

Before parting, it may be added that in this case the plaintiffs and the respondents and in particular defendant No. 2 Maqsood Ali are related to each other (be sons and daughters of two brothers, namely. Wahid-ul Hasan and Mehfooz-ul Hasan). The entire case of the plaintiffs is based on misrepresentation, fraud by Maqsood Ali and also by defendant No. 1 Mehfooz-ul Hasan. In a case of fraud, undue influence or misrepresentation, the complainant should come out with all the essential facts which are necessary for establishing the contentions of misrepresentation, fraud etc. Merely by making some-general allegations the existence of misrepresentation of fraud cannot be established. A

Court while considering such question is required to scrutinize the pleading and then find out as to whether the plea is made out and full particulars required for establishing the fraud, misrepresentation or undue influence are available. In the light of the pleadings and evidence that have come on record in the present case, it is clear that plaintiffs have miserably failed to establish these facts. Plaintiffs want the Courts to hold that the delegation made in the power of attorney is being used contrary to the one made, i.e. to hold that no delegation of power for sale was granted to Mehfooz-ul Hasan. The best evidence to prove the said fact is the power of attorney itself. Instead of doing so, plaintiffs have tried to establish their case on the basis of oral statement, which is also not trustworthy. Then being so, I find no case made out for interference in this appeal. As plaintiffs have failed to discharge their burden of proving their claim in accordance with law.

Accordingly finding no case for interference and for the reasons indicated hereinabove appeal stands dismissed without any order so as to cost.