



IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION
[CIRCUIT BENCH AT PORT BLAIR]

PRESENT: HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)

SA/7/2025

SHRI K. SUBRAMANI

... APPELLANT

Versus

SHRI G. ARUL ANAND

... RESPONDENT

For the appellant

: Mrs. Anjili Nag, Sr. Adv.
Mr. Adarsh Ilango
Ms. Sohini Biswas

For the respondent

: Mr. Prohit Mohan Lall

Heard on

: 18.03.2026

Judgment on

: 23.03.2026

CHAITALI CHATTERJEE (DAS), J.

1. This second appeal has been filed from the original judgment and decree dated March 27, 2023, in Title Appeal No. 15 of 2018 passed by the learned District Judge, Andaman & Nicobar Islands, whereby the appeal filed by the appellant affirming the judgment and decree passed by learned Civil Judge (Senior Division) has been dismissed.

**FACTUAL MATRIX**

2. A suit was filed by Smti. K. Muniamma @ Muniammal for declaration of title, injunction and cancellation of the deed dated April 15, 1991 being a forged, fraudulent illegal document. The present appellant is the daughter of the original plaintiff Muniamma. The case of the plaintiff was that she was an illiterate lady and being the allottee of the suit land intended to sale the land and executed a General Power of Attorney in favour of the respondent/defendant to that extent that he would find a suitable buyer on a sale consideration of Rs. 80,000/- for 200 square meter out of 300 square meter of land. The respondent was a Government employee, employed in the Andaman & Nicobar Police Force as a Constable/Head Constable. At the beginning of the year, 1991 the plaintiff approached the defendant for suggesting some ways for getting some money as she wanted to repair and remove her hut in turn after few days the defendant/respondent persuaded her to consider selling 200 square meter, assuring that he would assist in procuring a suitable buyer. Upon such persuasion, the plaintiff agreed with such proposal. Pursuant thereto the defendant paid a sum of Rs.50,000/- from his own pocket with the understanding that the said amount would be adjusted against the total consideration of Rs 80,000/-.



3. In the middle of April 1991 the plaintiff and her husband having full faith and confidence in the defendant put their respective thumb impression and those papers were taken away by the defendant in order to deposit the same in the office to be registered. He also paid the said amount of Rs.50,000/- in cash. After few days the plaintiff was taken to the Sub-Registrar office and on reaching plaintiff's thumb impression was taken on several places also in a register. However, he was asked not to appear before the office of Sub-Registrar. The business relating to putting of seal, thumb impression, signature etc. was done by a Clerk. The defendant undertook to go to Tehsil Office and paid annual land revenue for the suit property until the sell was made and hence she did not do anything. Some times in the end of April 1995 or in the first week of May, 1995 the defendant accumulated some building materials adjacent to the land of the plaintiff and on asking the plaintiffs first time came to learn that the defendant/respondent purchased the entire plot from her in the year 1991 by dint of the document which was not the power of attorney but a Deed of Sale and she was to quit and vacate and he further intended to raise fresh building on that alleged purchased land. She and her husband could sense that some foul play had been played in the matter of registration. Since both of them were totally ignorant and illiterate, they fully relied upon the respondent who has



betrayed them. Accordingly, they contacted with an Advocate who was then working in the revenue department and then the registration records were inspected and it was informed that she had executed has not a Power of Attorney, but a sale deed in favour of the defendant for an apparent consideration of Rs.80,000/- .

4. The suit was filed as a fraud was practiced upon them by misrepresenting the deed as a Power of Attorney and several alterations and additions made in the said deed illegally and mischievously, without the knowledge and consent of the plaintiff or her husband and changed the quantum of land from 200 square meters to 300 square meters. It was not mentioned in the deed regarding payment of Rs.50,000/- but 80,000/- was mentioned towards consideration amount. The respondent on the strength of that forged deed obtained the order of mutation on 18.12.1991, but the plaintiff never received any paper or notice from the office of Tehsildar at any point of time. The defendant/respondent did not give any reply to the letter given by the plaintiff through the advocate giving rise to filing of the suit and plaintiff expressed the readiness and willingness to repay the said amount of Rs.50,000/- which was received from the defendant.

5. The defendant/respondent filed written statement and denied the allegation levelled against him and contended that



since the plaintiff intended to sell the suit land, duly executed the same in favour of the respondent by way of registered deed of sale, received the entire consideration amount and hence, no case is made out.

6. The learned Trial Court being Civil Judge Senior Division, Port Blair dismissed the suit on November 1, 2018 followed by the judgment passed by the first Appellant Court in Title Appeal No. 15 of 2018, whereby the judgment of dismissal was affirmed. The instant appeal has been filed on the ground that the learned Courts whether by justified in placing the onus to prove the execution of deed upon the original plaintiff and not upon the person holding the position of confidence and trust when it was asserted and urged that execution of the deed involved the issues of fraud and misrepresentation. Hence this appeal.

SUBMISSION

7. The learned advocate representing the appellant argued that examination-in-chief of the appellant was accompanied a certificate affirmed by the concerned officer of District Judge at Port Blair in accordance with Rule 36 of the Civil Rules & Orders of the Calcutta High Court, clearly illustrates that she was an illiterate lady who used to put thumb impression. Therefore, the presumption that K.Muniamma was an illiterate lady will go in her favour as no contrary evidence was brought by the defendant to counter the contention of illiteracy. In the



written statement it was stated that the contents of the sale deed was read over and explained to her which admits that the plaintiff was an illiterate person though in the foot of the deed nothing was mentioned. No suggestion was put by the defendant while cross examining K.Muniamma whether she was not an illiterate lady.

8. That apart the learned Trial Court also held that the plaintiff is an illiterate lady and the same is not in dispute. However, the first Appellant Court did not come into any finding about the question of literacy of the said plaintiff. Therefore, such fact whether plaintiff was illiterate or not cannot be decided in the second appeal because the question of law as assailed was not on the ground that she was an illiterate lady. Rather the question of law formulated by the second appeal before this Court affirms that she was an illiterate lady. No cross appeal was filed by the defendant either challenging the finding of both the Courts below that she was an illiterate lady.

9. It is further argued by the learned Advocate that in ***Bituljan Bibi Vs Abdul Kashem Sahow & Ors. SA No. 476 of 1990*** it was held that “read over and explained” is a very important term particularly when the executant is an illiterate and in that case due to such reason the partition deed was declared to be void as it was executed without making it understood to the executant. It is further argued that no



attesting witness as observant from the original sale deed dated 15.04.1991 were ever examined by the defendant and no attesting witness came before the Court to depose about the execution of the alleged sale deed.

10. The DW.2 was an identifier and cannot be considered as an attesting witness. The deed itself would manifest that there are interpolation of area 200 square meters out of 300 square meters replaced with area 300 square meters and such correction was not explained by any of the witnesses.

11. It is vociferously argued that since the plaintiff being the executor of the alleged sale deed was an illiterate person no scribe or deed writer was ever examined and the burden of proof was therefore shifted under Section 111 of the Indian Evidence Act as the defendant being the holder of active confidence was not able to proved the alleged sale deed and there exists enough suspicious circumstances which questions its validity. Therefore, the alleged sale deed is void in the eye of law.

12. The learned Advocate further relied upon the decision in **2003 AIR Supreme Court 4351 Krishna Mohan Kul alias Nani Charan Kul & Anr. Vs Pratima Maity & Ors.**, whereby concurrent finding of the Appellate Court and the Trial Court was interfered with and the sale deed executed by the old, illiterate and ailing person was held to be void and invalid,



shifting the burden of proof upon the beneficiary considering the same to be in a dominant position and Section 111 of the Indian Evidence Act was made applicable.

13. Similar view was taken by Calcutta High Court in ***Debasish Das Vs Urmila Mitra (SA No. 6 of 2024)*** as relied upon by the learned Advocate. Further reliance was put in the case of ***Amiruddin Ali @ Amiruddin Mondal Vs Kali Bala Bhunia (Civil Appeal No.1393 of 1969)***, where it was held that a case of an illiterate lady is akin to be that of Pardanashin lady and the onus is on the defendant to prove that execution of any transaction was the conscious mental act of that person.

14. In ***2025 AIR Supreme Court 4342 Shanti Devi Vs Jagan Devi & Ors.*** The Hon'ble Supreme Court held that the sale deed to be void as no witness would substantiate the payment of sale consideration. Further relied upon the decision of ***Kewal Krishan Vs Rajesh Kumar & Ors. (2022 AIR Supreme Court 564)*** where also it was held that when no witness was adduced by the beneficiary about the payment of price mentioned in the sale deed, sale deed will have to be held as void being executed without consideration. Further put reliance in ***2019 AIR Supreme Court 719 Bhimabai Mahadeo Kambekar Vs Arthur Import and export Company & Ors.*** Where it was held that mutation of a land in revenue record does not create or extinguish title over such land nor it has any



presumptive value on title. Lastly relied upon the decision of **AIR 1969 Supreme Court 1147 M.L Abdul Jabbar Sahib -Vs H.Venkata Sastri and Sons and Ors.** where it was held that identifier or registering officer is not an attesting witness. Therefore, the burden of proof shifts upon the person holding confidence and trust and the defendant was unable to proof the alleged sale deed and therefore both the learned Courts are in placing the onus to proof the execution of deed upon the original plaintiff. Accordingly, prays of setting aside the judgment and decree passed in the appeal.

15. The argument of the learned Advocate of the respondent made on other hand that in the written statement the respondent denied that she was an illiterate lady. No other evidence was there to proof that she was an illiterate lady. The point of illiteracy was not proved at all. The learned Trial Court considering the evidences held incorrectly that the defendant did not oppose the contention of the plaintiff being an illiterate lady. The PW.2, who was posted as the Clerk in the Office of the Sub-Registrar, Port Blair is an independent witness who has deposed that the sale was executed by the Vendor Smti. K. Muniamma and the purchaser was G.Arul Anand. He admitted certain corrections were made as in usual practice before registration, certain correction if necessary can be made and it was endorsed by the parties and the thumb impression of the



Appellant was taken. It is further argued that from his evidence it is apparent that the Sub-Registrar before finalizing the register normally asked the Vendor whether he received all amount of consideration money or not and same thing happened in this case and therefore, the plea of not having any knowledge about the deed as taken by the appellant is absolutely false and fabricated. The certificate issued was of 1984 and the registration was done in the year 1991. The Deputy Commissioner, District of Andaman issued the sanction which is the condition precedent in the Island before any sell of land and it clearly manifest that request was made for permission to dispose of the house standing on the site as mentioned therein in respect of 300 square meter area and accordingly, permission was accorded in respect of the house standing on the site mentioned.

16. Both the learned Courts did not consider the issues raised by filing the suit and held that plaintiff has failed to discharge her burden to prove that alleged sale deed was prepared fraudulently by the defendant and the procedure adopted during registration of the deed is correct and lawful. The learned Advocate also relied upon the **AIR 2003 SCC 4351 Krishna Mohan Kul alias Nani Charan Kul & Anr.** where it was observed that the onus to proof the validity of the deed of settlement was on respondent No.1, when fraud



misrepresentation or undue influence is alleged by the party in this suit, normally the burden is on him to proof such fraud, undue influence or misrepresentation. In this case there was no fiduciaries relationship between the parties and the later was not in a position of active confidence. So, cannot be said to be the dominant position for which the burden is to be shift upon him. Accordingly, prayed for dismissal of the appeal.

ANALYSIS

17. Heard the submission.

18. At the time of admission of the appeal the question of law formulated:-

(a) Whether the learned Courts below substantially erred in dismissing the suit ignoring that the original plaintiff was an illiterate women and that the contents of the instruments were not read over and explained to her?

(b) Whether both the learned courts were justified in placing the onus to prove the execution of the deed upon the original plaintiff and not upon the person holding the position of confidence and trust when it was asserted and urged that the execution of the deed involved the issues of fraud and misrepresentation?

19. This is suit for declaration of title, injunction and cancellation of deed with regard to the suit property as described in the schedule therein. In this case the registered



deed of sale was executed was marked with Exhibit and contained the thumb impression being RTI of the plaintiff. The alleged deed was executed on 15th day of April 1991 between the plaintiff as a Vendor and the respondent as the purchaser. The disputed property was described in the extract of the house site register in Form 'O' and sketch map annexed with the deed which was enjoyed by her without any interruption. The sale permission was accorded by the Deputy Commissioner and NO Dues certificate was also mentioned in the deed and those were annexed therewith. The consideration amount was mentioned as of Rs.80,000/- claimed to be paid by the purchaser to the vendor in full and the receipt of the same was acknowledged by the vendor and conveyed the suit property the respondent. No receipt was annexed with the said deed of sale and also no Memo of consideration can be found attached with the said deed of sale. The deed was presented before the Office of Sub-Registrar of Andaman & Nicobar, Port Blair who put his signature thereon.

20. The advocate's letter was exhibited which was given to the respondent on 03.07.1995 claiming that the impugned deed of sale was vitiated by fraud but the respondents did not give any reply to the same.

21. The learned Appellate Court observed that at the time of execution of any Power of Attorney question of payment of any



part of consideration money does not arise and it arises only after final settlement of the agreement in question, but in the instant case Rs.50,000/- was paid at the time of execution of deed and it impliedly reveals that the document was not a Power of Attorney. The learned Appellate Court relied upon the evidence of PW.2 the clerk of the office of Register and from whose testimony it was clear that the plaintiff was present before the Sub-Registrar and was asked by the vendor as to whether she received the amount of consideration or not. On perusal of the entire record as well as the observations made by both The Learned Court the fact of the appellant being an illiterate cannot be wiped out hence the question arises then whether the content of the documents so registered was read over to her or not.

22. In terms of section 58 the procedure is mentioned regarding the Particulars to be endorsed on documents admitted to registration.—(1) On every document admitted to registration, other than a copy of a decree or order, or a copy sent to a registering officer under section 89, there shall be endorsed from time to time the following particulars, namely:—

- (a) the signature and addition of every person admitting the execution of the document, and, if such execution has been admitted by the representative, assign or agent of any person,



the signature and addition of such representative, assign or agent;

(b) the signature and addition of every person examined in reference to such document under any of the provisions of this Act; and

(c) any payment of money or delivery of goods made in the presence of the registering officer in reference to the execution of the document, and any admission of receipt of consideration, in whole or in part, made in his presence in reference to such execution.

(2) If any person admitting the execution of a document refuses to endorse the same, the registering officer shall nevertheless register it, but shall at the same time endorse a note of such refusal.

23. In the present case on behalf of plaintiff P.W 2 LGC posted at Sub-Registrar office at Port Blair deposed and specifically mentioned the procedure adopted by the Sub-Registrar. Once it is established that she was asked about receiving the amount by the sub-registrar the entire case made out by the appellant loses its credibility of her ignorance about the content of the deed. It is now to be ascertained that when she being an illiterate lady has raised the issue of fraud and misrepresentation and when there was no note that the content of the deed was read over and explained to her or when no deed



writer was not examined nor any of the attesting witnesses, how far the onus lies upon her to prove that fraud was practiced on her.

24. In the decision as relied upon in ***Bituljan Bibi (Supra)*** a declaration was prayed for in respect of a partition deed as fraudulent having got executed from an illiterate lady by misrepresentation. The said lady came before the Court and stated she did not understand the purport and content of the partition deed which was executed on misrepresentation given by her son. The deed writer was not examined as witness. There was no note on content made in the deed to the effect that it was read over and explained to her. The allegation was against the son of the plaintiff who was an aged mother being taken care by her sons and such fraud was practiced by her son. The Co-ordinate Bench held that the Appellate Court did not consider the marking read over and explained' is a very important term when particularly the executor lady or gentleman is illiterate and the deed writer is not the witness".

25. In Section 101 of the Evidence Act and Section 111 of the Evidence Act, where there is a question as to the good faith of the transaction between the parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.



26. In the case of **Krishna Mohan Kul @ Nani Charan Kul & Anr. (Supra)** The Hon'ble Supreme Court further observed that the principle has been ingrained in Section 111 of the Indian Evidence Act, 1872. The rule here laid down is in accordance with the principle, long acknowledged and administered in course of equity in England and America. This principle is that he who bargains in matter of advantage with a person who places a confidence in him is bound to show that a proper and reasonable use has been made of that confidence. In this case the concerned person was aged about 106 years and was suffering from various ailments.

27. It was further held by the Apex court

"...that in judging the validity of transaction between the persons standing in a confidential relation to each other, it is material to see whether the person conferring a benefit on the other hand competent and independent advice. The age or capacity of the person conferring such benefit and the nature of benefit are of very great importance in such cases. In such cases it is always obligatory for the donor /beneficiary under a document to prove due execution of the document in accordance with law, even dehors the reasonableness or otherwise of the transaction, to avail of the benefit or claim rights under the document irrespective of the fact whether such party is the defendant or plaintiff before court."

28. The Hon'ble Supreme Court in Paragraph-12, observed that:-

"the Court was dealing with a case where an old and ailing illiterate person was stated to be the executed and no witness was examined to prove the execution of the deed or putting of the thumb impression. "It was rightly noticed by the High Court that the Courts below have wrongly placed onus to prove execution of the deed by Dasu Charan Kul on the plaintiffs. There was challenged by the plaintiffs to validity of the deed. The onus to prove the validity of the deed of settlement was on defendant No.1 when fraud, misrepresentation or undue influence is alleged by the party in a suit, normally the burden is on him to prove such fraud



and undue influence or misrepresentation. But, when a person is in fiduciary relationship with another and the later in position of active confidence the burden of proving the absence of fraud, misrepresentation or undue influence is upon the person, in the dominating position, he has to prove that there was fair play in the transaction and that the apparent is the real, in other wards, that the transaction is genuine and bonafide. In such case the burden of proving the good faith of the transaction is thrown upon the dominant party that is to say the party who is in a position of active confidence.....

29. Therefore the entire observation was based on the fact that firstly if it is proved that the executant is an illiterate person and also had any fiduciary relation or the beneficiary was in his/her active confidence and also the age and mental capacity of the executant when the onus shifts upon the defendant/respondent who denied that any fraud is practiced.

30. ***In the case of M.L Abdul Jabbar Sahib -Vs H.Venkata Sastri and Sons and Ors(supra)*** a security bond was attested which was challenged since it was not attested by two witnesses. The Hon'ble Supreme Court discussed Section 3 of Transfer of property Act to define the word Attested. It was further held *'that the Registering officer under section 58/59 of the Registration Act in under a duty to enquire whether the documents were executed by the person by whom it purports to have been executed and to satisfy about the identity of the witness .He discharged his statutory duty under registration Act and not for the purpose of attesting it certified that he has received from the executant a personal acknowledgement of his signature .*



31. In the present case the nature of the document executed was under challenge as it was never denied that no document was executed. Once the Sub-registrar discharged his duty after following the procedure which has been proved by P.W2, there remains no room to doubt about the knowledge of appellant/plaintiff regarding payment of the amount of Rs. 80,000/- and the description of the property, so it is beyond acceptance that even thereafter she remained ignorant about the content/nature of the deed specially when her husband was also one of the attesting witness, of such deed.

32. Nothing was proved to show that there was any active, confidential or fiduciary relationship existed between the parties and neither the plaintiff was an ailing or aged lady. Admittedly in the deed at the foot it was not mention "read over and explained" when the plaintiff/appellant put the thumb impression but the P.W 2, the clerk proved that the contents were read over to her. She did not cite her husband to depose who was all along with her and also put his thumb impression as one of the attesting witness. Pertinent to mention herein the husband of the appellant is a group D Government employee as can be found from the evidence and hence it is difficult to believe was an absolutely illiterate person however he did not turn up to support the case of the plaintiff. He being an



attesting witness and a vital person to prove the case, was not cited as witness and no explanation in this regard can be found.

33. In the case of ***Debasish Das (Supra)*** it was held that valid consideration is an essential element of contract and without it the contract is void and unenforceable. In the said case two major issues were raised as one of the two witnesses had a vested interest which undermined his credibility while the neutral witness failed to appear and testify.

34. In the said case almost similar fact can be found as a registered instrument being an alleged sale deed was said to have been executed by the appellant/plaintiff in favour of respondent No.1, i.e. the elder daughter of the appellant and the appellant executed the deed on the garb of being a Power of Attorney. It was stated by the appellant that appellant had full faith and confidence reposed upon the respondent and being an illiterate person signed on the alleged instrument, as such, fraud has been committed upon him.

35. The Learned Single Bench declared the deed of sale as void. The fact of the case discloses that plaintiff was the father who alleged fraud against his daughter who was otherwise in his active confidence as he had full faith and confidence in her .

36. In the case of ***Amiruddin Ali @ Amiruddin Mondal (Supra)*** again it was held that burden of prove lies on the person seeking to sustain a transaction entered into with an



illiterate village women to demonstrate that the transaction was her conscious and intelligent act, both physically and mentally. In this case the allegation of misrepresentation was against the son-in law and his father to pit pressure on the mother of deceased daughter.

37. In the present case even if it is considered that she was an illiterate lady as she put her thumb impression, the appellant miserably failed to prove that any fraud was practiced on her and the deed was executed on misrepresentation of fact. The learned Appellate court as well as the trial court relied upon the evidence of P.W 2 who also said the contents were read over and explained to her though it was not mentioned in the deed itself. Apparently excepting the statement of the appellant no other evidence can be found to substantiate that the respondent was in active confidence of the appellant.

38. The learned trial court discussed the burden of proof and onus to proof and relied upon the decision of the Hon'ble apex court in **AIR 1964 SC 136 A.Raghavamma and Anr. Vs A. Chenchamma and Anr** and rightly held that the suit was filed by the plaintiff to declare a registered Sale Deed on the ground of fraud and misrepresentation, so initial burden lies upon her to first establish her case .

39. The Hon'ble Supreme Court in the case of **Kewal Krishan (Supra)** held that if a sale deed in respect of immovable property



is executed without payment of price and does not provide for payment of price at future date, it is not sell at all in the eyes of law and has got no legal effect. In the present case the amount of Rs. 80,000/- was very much mentioned in the deed and the appellant admitted to have received the amount but disputed the amount. It further transpires from the judgement of the appellate court that the appellant further took the ground of her mental illness before the Learned Appellate court and also produced a medical certificate which was of the year 1984. The learned appellate court found that the certificate was not proved. This court fully endorsed such observation as in the plaint no such case was ever make out but at the time of filing the affidavit in chief such ground was taken which was filed in the year 2007. Question arises as to how she could apply for permission in the year 1990 for sale of the property if she had such a severe mental problem. She never denied the thumb impression on the deed or it was taken by applying force or she did not go before the office of Sub Register. DW 2 Faviyanos Surin signed on the said deed at the registry office and in her presence the plaintiff put her thumb impression.

40. It is settled law that unless the appellate court misdirected themselves in appreciating question of law and place the onus in a wrong way the scope of interference with



concurrent finding of fact while exercising jurisdiction under section 100 of CPC is very limited.

CONCLUSION

41. In the light of the above judicial pronouncement and going through the judgement of learned appellate court affirming the judgement of the trial court it is found that both the learned court otherwise held that the appellant was an illiterate lady but did not consider that she was misrepresented by the respondent by falsely giving an impression that the deed she executed and registered, was not a Power of attorney but a Sale deed .

42. This Court fully endorse such observation the appellant may be an illiterate lady but she failed to prove that she had any fiduciary relation with the respondent or he was not a person of her active confidence. She could not give any detailed particulars how any relation of active confidence developed between them. Therefore the onus to prove the misrepresentation on her which she failed to prove.

43. Hence the law so formulates is considered to that extent that both the Learned court was justified in placing the onus to prove the execution of the deed upon the original plaintiff and not upon the respondent as the appellant failed to prove that the contents were not read over and explained to her though she was an illiterate lady.



44. Therefore this Court finds no merit in this appeal.
45. This **SA No.7 of 2025** is hereby dismissed.
46. No order as to costs.
47. Decree be drawn up accordingly.
48. Let the Trial Court Records along with the copy of this judgement be forwarded to the Trial Court forthwith.
49. Urgent Photostat certified copy of the judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(CHAITALI CHATTERJEE (DAS), J.)