



HIGH COURT OF UTTARAKHAND AT NAINITAL

Second Appeal No. 145 of 2023

Gopal Singh

.....Appellant

Versus

Lavendra Singh and others

....Respondents

Present:-

Mr. Neeraj Garg, Advocate for the appellant.

JUDGMENT

Hon'ble Ravindra Maithani, J. (Oral)

By means of instant second appeal, the appellant challenges the following judgment and decree:-

- (i) Judgment and decree dated 05.08.2022, passed in Civil Suit No.76 of 2015, Gopal Singh Vs. Lavendra Singh and others ("the suit") by the court of 1st Additional Civil Judge, Kashipur, District Udham Singh Nagar. By it, the suit filed by the appellant for cancellation of sale deed dated 30.01.2016 in favour of the respondent nos. 1 and 2 has been dismissed; and
- (ii) Judgment and decree dated 27.09.2023, passed in Civil Appeal No. 42 of 2022, Gopal Singh Vs. Lavendra Singh and others, passed by the court of 2nd Additional Civil Judge, Kashipur, District Udham Singh Nagar (" the appeal").

2. Heard learned counsel for the appellant and perused the record.

3. The appellant filed the suit on the ground that the respondent no.1 expressed willingness to purchase a land from the appellant in the month of January, 2016. The land was mortgaged with the Bank. It was agreed that the respondent no.1 shall repay the loan and shall also pay Rs.10 lakh as consideration for the sale of the land. Accordingly, on 30.01.2016, a sale deed was executed. The sale consideration was given through cheques. But, when presented, the cheques were dishonoured. Suit for cancellation of the sale deed was filed on the following grounds:-

(i) The cheques given a consideration were not honoured by the Bank; and

(ii) The respondent no.1 did not repay the loan.

4. The respondents filed a joint written statement and denied the allegations. According to the respondents, it was not a condition that they would repay the bank loan. In fact, according to the respondents, they were never told about any bank loan and as such, it was not written in the sale deed.

5. Based on the pleadings of the parties, five issues were framed. Parties led their evidence. Having considered the evidence and material on record, the suit was dismissed on 05.08.2022, by the trial court and the appeal against it was also dismissed.

6. Learned counsel for the appellant submits that there are substantial questions of law involved in this appeal. He submits that to that extent, the impugned judgment and decree are valid

that in case, sufficient consideration is not paid, the suit for cancellation of sale deed may not lie and for recovery of remaining amount suit may lie. But, he submits that the instant case is quite distinct. It is argued that in the sale deed, two cheques of the year 2014 were given, which is a fraud and this aspect has not been considered by the trial court. He submits that though the appellate court considered this aspect, but finding is not in accordance with law.

7. At this stage only, the Court wanted to know from learned counsel for the appellant as to whether, it has been the pleaded case of the appellant that the cheques that were given for sale consideration, were of the year 2014 and they were defrauded by the respondents. He could not indicate any pleading, as such.

8. Fraud is a question of fact. Unless pleaded, at this stage, for the first time, such question cannot be raised. Moreover, execution of sale deed is admitted to the appellant. How the appellant was defrauded, when the cheques were given to him and were also recorded in the sale deed.

9. The trial court relied on the judgments of the Hon'ble Supreme Court in the cases of Kaliaperumal Vs. Rajagopal and another, (2009) 4 SCC 193 and Vidhyadhar Vs. Manikrao and another, (1999) 3 SCC 573 and other cases to record its finding which has been upheld in the judgment of the appeal.

10. As stated, the suit for cancellation of sale deed was filed on two grounds; firstly, that the cheques as given as the consideration were not honoured, which means partial consideration was paid; and secondly, that the respondents did not pay the bank loan. On it, it has been the case of the respondents

that they were never informed by the appellant that the land is mortgaged and there is any bank loan on it.

11. In fact, the Court further requested learned counsel for the appellant to indicate as to whether any averment with regard to the mortgage of the land with the bank is made in the sale deed? He could not indicate anything. In fact, it is not there.

12. The question that remains is on the partial payment of sale consideration.

13. In the case of Kaliaperumal (*supra*), the Hon'ble Supreme Court discussed this aspect and held that payment of entire price is not a condition precedent for completion of the sale. In para 17 of the judgment, the Hon'ble Supreme Court observed as follows:-

“17. It is now well settled that payment of entire price is not a condition precedent for completion of the sale by passing of title, as Section 54 of the Transfer of Property Act, 1882 (“the Act”, for short) defines “sale” as “a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised”. If the intention of parties was that title should pass on execution and registration, title would pass to the purchaser even if the sale price or part thereof is not paid. In the event of non-payment of price (or balance price as the case may be) thereafter, the remedy of the vendor is only to sue for the balance price. He cannot avoid the sale. He is, however, entitled to a charge upon the property for the unpaid part of the sale price where the ownership of the property has passed to the buyer before payment of the entire price, under Section 55(4)(b) of the Act.”

14. In the case of Vidhyadhar (*supra*) also, this aspect has also been dealt with by the Hon'ble Supreme Court and in para 36 of the judgment, observed as follows:-

“36. The definition indicates that in order to constitute a sale, there must be a transfer of ownership from one person to another, i.e., transfer of all rights and interests in the properties which are possessed by that person are transferred by him to another person. The transferor cannot retain any part of his interest or right in that property or else it would not be a sale. The definition further says that the transfer of ownership has to be for a “price paid or promised or part-paid and part-promised”. Price thus constitutes an essential ingredient of the transaction of sale. The words “price paid or promised or part-paid and part-promised” indicate that actual payment of the whole of the price at the time of the execution of sale deed is not a sine qua non to the completion of the sale. Even if the whole of the price is not paid but the document is executed and thereafter registered, if the property is of the value of more than Rs 100, the sale would be complete.”

15. The courts below have rightly held that merely because the cheques were dishonoured, the sale deed may not be cancelled. There is no such question of law, involved in this second appeal. Therefore, it does not merit acceptance. Accordingly, the second appeal deserves to be dismissed at the stage of admission itself.

16. The second appeal is dismissed *in limine*.

(Ravindra Maithani, J.)
17.07.2026