

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.405 of 2002

Jant Ram Satnami, aged 40 years, S/o Charan Satnami, R/o Village Chingria, P.H.No.41, Tahsil Tilda, District Raipur (C.G.)

(Plaintiff)
---- Appellant

Versus

1. Daya Das Satnami (died and deleted)
2. Neelkanth Satnami, aged 22 years, S/o Dayadas,
3. Premchand Satnami, aged 22 years, S/o Nathuram,

All agriculturist, R/o Village Chingria, P.H.No.41, Tahsil Tilda, District Raipur (C.G.)

4. State of Chhattisgarh, through Collector, Raipur, District Raipur (C.G.)

(Defendants)

5. Maniram Dahariya, S/o Itwari Ram Dahariya, aged about 50 years, Caste Satnami, R/o Village & Post Saddhu, P.S. Mowa Pandari, Tahsil and District Raipur (C.G.)

6. Deepmala, W/o Ghanshyam Josi, aged about 30 years, Caste Satnami, R/o Rajeev Nagar, Ward No.2, Kharora, P.S. Kharora, Tahsil Tilda, District Raipur (C.G.)

---- Respondents

For Appellant: Mr. H.B. Agrawal, Senior Advocate with Mrs. Meera Jaiswal, Advocate.

For Respondent No.4 / State: -
Mr. Arun Sao, Deputy Advocate General.

For Respondents No.5 and 6: -
Miss Swati Upadhyay, Advocate on behalf of
Mr. Kishore Bhaduri, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

10/12/2018

1. The substantial question of law involved, formulated and to be answered in this plaintiff's second appeal is as under: -

“Whether the lower appellate Court was justified in reversing the finding recorded by the trial Court that the sale deed dated 11.02.1997 executed by Sukariya Bai was without consideration and void abinitio?”

(For the sake of convenience, parties would be referred as per their status and ranking shown in plaint before the trial Court.)

2. Plaintiff Jantram filed a suit for declaring three sale deeds Exs.P-4, P-5 & P-6 executed by his mother Sukariya Bai on 11-2-1997 in favour of Dayadas (defendant No.1), Neelkanth (defendant No.2) & Premchand (defendant No.3) to be null and void mainly on the ground that on 11-2-1997, the date on which sale deeds were executed by his mother, his mother was aged and illiterate woman and the defendants, taking benefit of her old age and illiteracy, fraudulently without payment of consideration to her, got the aforesaid sale deeds executed in their favour in the Office of the Registrar, Raipur. Since no consideration amount has been passed to seller Sukariya Bai, to his mother, and the defendants have also got their names mutated in the land records, as such, all the sale deeds Exs.P-4, P-5 & P-6 are null and void and they be set aside and are not binding on the plaintiff.
3. The defendants filed their joint written statement denying the plaint allegations stating inter alia that the sale consideration has been paid to Sukariya Bai which has been recorded in sale deeds Exs.P-4, P-5 & P-6 and title has been passed in their favour and thereafter their names have rightly been mutated in the land records, as such, the suit is liable to be dismissed.
4. The trial Court decreed the suit holding that no consideration has been passed in favour of Sukariya Bai vide Exs.P-4, P-5 & P-6 on 11-2-1997 by defendants No.1 to 3, respectively, and as such, the

sale deeds are null and void and not binding on the plaintiff, who is son of Sukariya Bai, and directed for delivery of possession of suit land to the plaintiff.

5. In appeal preferred by the defendants, the first appellate Court set aside the judgment & decree passed by the trial Court and dismissed the suit against which this appeal has been preferred in which substantial question of law has been framed which has been set-out in the opening paragraph of this judgment.
6. Mr. H.B. Agrawal, learned Senior Advocate appearing for the plaintiff / appellant, would submit that the first appellate Court is absolutely unjustified in reversing the well merited and well reasoned judgment & decree of the trial Court and thereby dismissing the suit, it ought to have been held that no consideration was passed in favour of Sukariya Bai – mother of the plaintiff, therefore, the sale deeds have rightly been held to be void and the same are not binding on the plaintiff and as such, the substantial question of law deserves to be answered in favour of the plaintiff and the second appeal deserves to be allowed.
7. Miss Swati Upadhyay, learned counsel appearing for respondents No.5 & 6, would support the judgment & decree passed by the first appellate Court and submit that none of the witnesses of the sale deeds Exs.P-4 to P-6 were examined, even the scribe of the sale deeds was also not examined, therefore, the first appellate Court is absolutely justified in granting the appeal and in dismissing the suit.
8. I have heard learned counsel for the parties and considered their rival submissions made herein-above and gone through the record

with utmost circumspection.

9. It is not in dispute that Sukariya Bai executed three sale deeds dated 11-2-1997 in favour of defendants No.1 to 3, respectively, and the amount of consideration is said to have been passed in the sale deeds to the extent of ₹ 1,51,800/-, ₹ 49,600/-, ₹ 38,600/-, respectively, by defendants No.1 to 3 in favour of Sukariya Bai. Thereafter, Sukariya Bai died after three months on 11-5-1997 and suit was filed by her son Jantram immediately thereafter on 31-7-1998 averring that Sukariya Bai was illiterate and aged woman and fraudulently, the sale deeds were got executed by the defendants in their favour by his mother Sukariya Bai without payment of any consideration to Sukariya Bai and that too fraudulently.
10. In order to prove the aforesaid non-payment of consideration, the plaintiff examined himself as PW-1 and Birbal (PW-2) to whom the plaintiff has informed that the defendants have got the sale deeds executed. No other witness either of the sale deeds was got examined by the plaintiff and even the scribe of the said sale deeds was not examined by the plaintiff, yet the trial Court after appreciating the evidence brought by the defendants who got examined the witnesses to the sale deeds Jeedhan (DW-4) and Nathuram (DW-5) came to the conclusion that consideration amount has not been passed in those sale deeds in favour of the plaintiff's mother, therefore, they are void and not binding on the plaintiff, but reversed by the first appellate Court by impugned decree.
11. The question for consideration is, whether the alleged non-payment of consideration amount would render the sale deeds Exs.P-4 to P-

6 void?

12. Section 54 of the Transfer of Property Act, 1882 defines “sale” as under: -

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

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

In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale.—A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property.”

13. The Supreme Court in the matter of Vidhyadhar v. Manikrao and another¹ while considering Section 54 of the Transfer of Property Act, 1882 held that even if the whole of the price is not paid, but sale deed is executed and thereafter registered, if the property is of value of more than ₹ 100, the sale would be complete. It was held as under:-

“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

¹ (1999) 3 SCC 573

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 whole of the price at the time of the execution of sale deed is not 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.

37. There is a catena of decisions of various High Courts in which it has been held that even if the whole of the price is not paid, the transaction of sale will take effect and the title would pass under that transaction. To cite only a few, in *Gyatri Prasad v. Board of Revenue*², it was held that non-payment of a portion of the sale price would not effect validity of sale. It was observed that part payment of consideration by vendee itself proved the intention to pay the remaining amount of sale price. To the same effect is the decision of the Madhya Pradesh High Court in *Sukaloo and Anr. v. Punau*.

38. The real test is the intention of the parties. In order to constitute a "sale", the parties must intend to transfer the ownership of the property and they must also intend that the price would be paid either in presenti or in future. The intention is to be gathered from the recital in the sale deed, conduct of the parties and the evidence on record."

14. Similarly, the Supreme Court in the matter of **Kaliaperumal v. Rajagopal and another**³ has clearly held that payment of entire consideration is not a condition precedent for completion of sale and passing of title and further held that the true test of passing of property is the intention of parties. It was also observed by Their Lordships of the Supreme Court 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

² 1973 All LJ 412

³ (2009) 4 SCC 193

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.

18. Normally, ownership and title to the property will pass to the purchaser on registration of the sale deed with effect from the date of execution of the sale deed. But this is not an invariable rule, as the true test of passing of property is the intention of parties. Though registration is prima facie proof of an intention to transfer the property, it is not proof of operative transfer if payment of consideration (price) is a condition precedent for passing of the property.

19. The answer to the question whether the parties intended that transfer of the ownership should be merely by execution and registration of the deed or whether they intended the transfer of the property to take place, only after receipt of the entire consideration, would depend on the intention of the parties. Such intention is primarily to be gathered and determined from the recitals of the sale deed. When the recitals are insufficient or ambiguous the surrounding circumstances and conduct of parties can be looked into for ascertaining the intention, subject to the limitations placed by [Section 92](#) of the Evidence Act.”

15. The Full Bench of the Allahabad High Court in the matter of Dip Narain Singh v. Nageshar Prasad⁴ observed that once a document transferring immovable property has been registered the transaction passes out of the domain of a mere contract and into one of the conveyance. Such a completed transaction is governed by the provisions of the Transfer of Property Act and so much of the Contract Act as is applicable thereto.

16. A conspectus of the aforesaid judgment would show that mere non-payment of consideration will not arrest the passing of title as a sale of immovable property may be effected in exchange for

4 ILR 52 All 338; AIR 1930 All 1 FB

the price paid or promised to be paid. But whether the vendor really intended to transfer the ownership by execution and registration or contracted to do so only after receipt of the consideration as a condition precedent, would depend upon the terms of the contract.

17. Reverting to the facts of the case in light of the legal position qua

Section 54 of the Transfer of Property Act, 1882, it is quite vivid that in the plaint it is the case of the plaintiff that the sale deeds were got executed without payment of consideration. It is not the case of the plaintiff that his mother never intended to transfer the property in favour of defendants No.1 to 3, but it is the case of the plaintiff that the alleged transfer in favour of defendants No.1 to 3 vide Exs.P-4 to P-6 is without payment of consideration. But the plaintiff in order to prove the same ought to have examined either the scribe of those sale deeds or the witnesses to the sale deeds namely, Jeedhan & Nathuram whom he has not examined for the reasons best known to him, but the aforesaid witnesses to sale deed namely, Jeedhan (DW-4) & Nathuram (DW-5) were examined by the defendants and they have categorically deposed that the consideration amount was paid by defendants No.1 to 3 to Sukariya Bai – mother of the plaintiff. The trial Court has pointed out discrepancy in the said payment of consideration in favour of the plaintiff's mother and made basis for granting decree in favour of the plaintiff. It is not the case of the plaintiff that his mother never intended to sell the property in favour of defendants No.1 to 3, but if it could be the case of the plaintiff that his mother was never

intended to sell and thereby even the consideration has not been paid, the question would be quite different. But, here, the plaintiff has averred only and only that there is non-payment of consideration, therefore, the sale deeds are null and void. But, the recital in the sale deeds admits no doubt that she had intended to transfer the title in favour of defendants No.1 to 3 on the date of execution of sale deeds on payment of consideration amount.

18. The Supreme Court in Vidhyadhar (supra) and Kaliaperumal (supra) has clearly held that even if the whole of the price is not paid, but the document is executed and registered, if the property is of more than rupees one hundred, the sale would be complete, as such, it cannot be held that the sale deeds executed by Sukariya Bai in favour of defendants No.1 to 3 are void. Thus, the plaintiff has failed to establish that Sukariya Bai never intended to transfer the property in favour of defendants No.1 to 3 and further failed to prove that consideration amount has not been passed in favour Sukhariya Bai, as the plaintiff has led no evidence except his self-serving statement to prove that averment which has rightly been reversed by the first appellate Court.

19. At this stage, it would be appropriate to notice Section 55(4)(b) of the Transfer of Property Act, 1882 which states as under:-

“55. Rights and liabilities of buyer and seller.—In the absence of a contract to the contrary, the buyer and the seller of immovable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following, or such of them as are applicable to the property sold:

(4) The seller is entitled—

(a) xxx xxx xxx

(b) where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer, any transferee without consideration or any transferee with notice of the non-payment, for the amount of the purchase-money, or any part thereof remaining unpaid, and for interest on such amount or part from the date on which possession has been delivered.”

20. The aforesaid provision provides that when the ownership of the property is transferred to the buyer before the payment of the whole price, the vendor is entitled to charge on that property for the amount of sale price as also for interest thereon from the date of delivery of possession.

21. The Supreme Court in Vidhyadhar (supra) while considering the applicability of Section 55(4)(b) of the Transfer of Property Act, 1882, held as under:-

“42. This clause obviously applies to a situation where the ownership in the property has passed to the buyer before the whole of the purchase money was paid to the seller or the vendor. What is contained in this clause is based on the English Doctrine of Equitable Lien as propounded by Baron Rolfe in *Goode v. Burton*⁵. This clause confers statutory recognition on the English Doctrine of Equitable Lien. As pointed out by the Privy Council in *Webb v. Macpherson*⁶ the statutory charge under this paragraph is inflexible. The charge does not entitle the seller to retain possession of the property as against the buyer but it positively gives him a right to enforce the charge by suit. (See: *Venkataperumal Naidu v. Rathnasabhpathi Chettiar*⁷; *Shobhalal Shyamlal Kurmi v. Sidhelal Halkelal Bania*⁸ and *Basalingaya Revanshiddappa v. Chinnaya Karibasappa*⁹.”

22. Further, Their Lordships in Vidhyadhar (supra) held as under:-

“43. In view of the above, the High Court was wholly in error in coming to the conclusion that there was no sale

5 (1847) 74 RR 633 : 1 Ex 189

6 (1903) 30 IA 238

7 AIR 1953 Mad 821

8 AIR 1939 Nag 210: ILR 1939 Nag 636

9 AIR 1932 Bom 247 : 34 Bom LR 427

as only a sum of Rs 500 was paid to defendant No. 2 and the balance amount of Rs 4500 was not paid. Since the title in the property had already passed, even if the balance amount of sale price was not paid, the sale would not become invalid. The property sold would stand transferred to the buyer subject to the statutory charge for the unpaid part of the sale price.”

23. In view of the aforesaid analysis, it is quite vivid that remedy of the appellant / plaintiff, if any, is to bring suit for consideration amount and sale cannot be declared void for want of consideration, if any, as the plaintiff has failed to establish that his mother Sukariya Bai was never intended to transfer the suit land in favour of defendants No.1 to 3 and consideration amount has not been passed to her. The first appellate Court is justified in granting the appeal by appreciating the evidence in proper perspective and I do not find any illegality or perversity in the said finding.
24. Consequently, the second appeal is liable to be dismissed and is accordingly dismissed. The substantial question of law is answered accordingly. No order as to cost(s).
25. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge