

CR No.8756 of 2017(O&M)
Date of Decision: 07.12.2018

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Mr. S.K. Sharma, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioner has assailed the order dated 14.11.2017 passed by Civil Judge (Junior Division), Faridabad, vide which application under Order 7 Rule 11 CPC filed by the petitioner was dismissed.

[2]. Perusal of the record would show that the plaintiff himself has challenged the registered sale deed dated 24.05.2013 to be null and void. As per recital in the plaint, defendants got executed and registered the sale deed in their favour and gave two cheques with an assurance to the plaintiff that the same would be honour. Sale deed was executed after receiving post dated cheques one of which was dishonoured on

presentation before the Bank.

[3]. Plaintiff further alleged that the first cheque was encashed while the second cheque was dishonoured. On 25.02.2014 on receiving the information regarding dishonouring of cheque, plaintiff approached the defendants and asked the defendants to pay the amount in cash, but the defendants issued letter dated 25.02.2014 with a request to deposit the cheque again. On deposit the cheque, the cheque was again dishonoured and returned back with the endorsement of “insufficiency of funds” on 06.05.2014. Plaintiff also alleged that the sale deed was executed on basis of post dated cheques, but the second cheque was dishonoured and the sale deed is null and void.

[4]. In para No.10 of the plaint, following recital was made:-

“10. That the defendants are continuously threatening the plaintiff to alienate the suit property to their customers after raising construction but the plaintiff requested not to raise any construction or not to alienate the suit property in any manner but the defendants are not ready to listen any word of the plaintiff hence this suit.”

[5]. Perusal of para No.10 of the plaint would show that the plaintiff has admitted the possession of the defendants. In the entire plaint, the plaintiff has not alleged that he is in possession of the land in question.

[6]. Learned counsel for the petitioner submitted that in view of first principle of **Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others, 2010(2) RCR (Civil) 564**, if the executant of a deed seeks cancellation of the same, he has to pay *ad valorem* Court fee on the consideration stated in the instrument.

[7]. Evidently, the plaintiff is the executant of the sale deed and he seeks to annul it on the ground of non-passing of consideration and fraud. The ratio laid down in **Suhrid Singh @ Sardool Singh' case (supra)** was followed by this Court in **Tarsem Singh and others Vs. Vinod Kumar and others, 2011 (31) RCR (Civil) 709**.

[8]. As against this, learned counsel for respondent No.1 submitted that in view of ratio laid down in **Tarun Kumar and others Vs. Pankaj Kapoor and others, 2016(5) RCR (Civil) 296**, if the possession was not delivered to the defendant, the non-passing of consideration coupled with plea of fraud can be assailed in a suit without payment of *ad valorem* Court fee. By referring to **Rambai Vs. Kapoori and another, 2014(4) RCR (Civil) 376**, learned counsel contended that in case execution of sale deed is without payment of consideration coupled with plea of fraud and the possession remained with the vendor, a suit for declaration without payment of Court fee can be maintained.

[9]. It is a settled principle of law on the strength of ***Kaliaperumal Vs. Rajagopal and another, 2009(2) RCR (Civil) 471 (SC)*** that sale is defined as being a transfer of ownership for a price. There will be absolute transfer of all rights in the property subject matter of sale. No rights are left with the transferrer. The price is fixed by the contract antecedent to the conveyance. Price is the essence of a contract of sale. There is only one mode of transfer by sale in regard to immovable property of the value of Rs.100/- or more and that is by a registered instrument. Payment of entire price is not a condition precedent for completion of the sale by passing of title in view of Section 54 of Transfer of Property Act which defines 'sale' as a transfer of ownership in exchange for a price paid or promised or part paid and part promised. In the event of non-payment of price/balance price, remedy available to the vendor is only to sue for the balance price by way of suit for recovery. The vendor cannot avoid the sale, however, he can create charge upon the property for the unpaid part of the consideration where the ownership of the property has passed over to the vendor before payment of entire sale consideration. If the amount of consideration paid through cheques and in the event of dishonouring of cheques, the vendor has to pay the *ad valorem* Court fee. The expression "law" occurring in Order 7 Rule 11 (d)

CPC includes judicial precedents of the Hon'ble Apex Court. The authoritative pronouncement of the Hon'ble Apex Court is the law of land. Reference can be made to **Bhargavi Constructions and another Vs. Kothakapu Muthyam Reddy and others, 2017(4) RCR (Civil) 359.**

[10]. One of the consideration made in the aforesaid cases was that the vendor claimed himself to be in possession and therefore, the case was not considered under the ambit of first principle of **Suhrid Singh @ Sardool Singh's case (supra).**

[11]. Perusal of the plaint would show that the plaintiff has admitted the possession of the defendants in para No.10 and the said assertion finds favour from the recital in the sale deed as well, therefore, facts of **Tarun Kumar and others case (supra)** are all together different. Similarly, in **Rambai Vs. Kapoori and another's case (supra)**, delivery of possession in favour of vendor was one of the consideration as in the said case, possession was found with the vendor. Second consideration was in respect of fraud with which the sale deed was allegedly executed. So far as possession of the land in question is concerned, the same has not been pleaded by the plaintiff in the plaint, rather the same has been pleaded conversely in favour of the defendants.

[12]. In a subsequent judgment in **CR No.4067 of 2012** titled

Dharam Singh and others Vs. M/s Omax Construction Ltd.

decided on 12.03.2015, the view expressed by this Court for not requiring *ad valorem* Court fee in case of challenge in the suit on the basis of fraud was overruled by the Hon'ble Apex Court in **CA No.8880 of 2015** arising out of **SLP(C) No.16313 of 2015** titled **M/s Omax Construction Ltd. Vs. Dharam Singh and others** decided on 26.10.2015.

[13]. For the reasons recorded hereinabove, I am of the considered view that the impugned order dated 14.11.2017 passed by Civil Judge (Junior Division), Faridabad is not legally sustainable. Plaintiff being the executant of the sale deed has to pay the *ad valorem* Court fee as per consideration shown in the instrument. Revision petition is accordingly allowed. Impugned order is hereby set aside. Normal consequences to follow.

07.12.2018

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**(RAJ MOHAN SINGH)
JUDGE****Whether reasoned/speaking
Whether reportable****Yes/No
Yes/No**