

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

209

RSA No.3634 of 2010 (O&M)

Date of decision: 26.07.2018

Prem Raj

..... Appellant

Versus

Krishan Chaudhary

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Sudhir Aggarwal, Advocate
for the appellant.

None for the respondent.

ANIL KSHETARPAL, J. (ORAL)

Plaintiff-appellant is in the regular second appeal against the concurrent finding of fact arrived at by the Courts below.

Plaintiff through the present suit seeks cancellation of the sale deed executed by him on 28.06.2000 on the ground that the sale consideration was paid through cheque dated 15.07.2000 but the same on presentation has been dishonoured. Both the Courts below after examining the evidence have decreed the suit for recovery of the amount along with interest on payment of ad valorem Court fee.

This Court has heard learned counsel for the appellant at length and with his able assistance gone through the judgment passed by the Courts below and the photocopy of the sale deed executed and registered on 28.06.2000. On reading of the aforesaid sale deed, it is apparent that on receipt of cheque, it is specifically mentioned that purchaser has now

become owner and he shall be entitled to use the property in any manner he likes. Learned counsel could not draw attention of the Court to any clause in the sale deed providing that on dishonour of cheque, the sale deed would be treated as cancelled or would have no force in the eye of law.

As per Section 55 of the Transfer of Property Act, a vendor is entitled to recover the amount of unpaid sale consideration and that would be charged on the property sold. This is exactly what the Courts have done by ordering recovery of the amount. The appellant shall be entitled to recover the amount as decreed treating it to be a charge on the property sold.

Learned counsel for the appellant has drawn attention of the Court to a judgment passed by the Hon'ble Supreme Court in the case of Janak Dulari Devi and another Vs. Kapildeo Rai and another, 2011(6) SCC 555. On careful examination of the aforesaid judgment, it is apparent that the Hon'ble Supreme Court has examined the issue in the context of peculiar practice prevalent in the State of Bihar wherein the registration receipt is exchanged only when the entire sale consideration is paid. Para 11 of the aforesaid judgment refers to the aforesaid practice is extracted as under:-

“11. At this stage, we may refer to the practice prevalent in Bihar known as 'ta khubzul badlain' (that is, title to the property passing to the purchaser only when there is "exchange of equivalents"). As per this practice, where a sale deed recites that entire sale consideration has been paid and possession has been delivered, but the Registration Receipt is retained by the vendor and possession of the property is also retained by the vendor, as the agreed consideration (either full or a part) is not received, irrespective of the recitals in the sale deed, the title would not pass to the purchaser, till payment of the entire consideration to the vendor and the Registration Receipt is obtained by the purchaser in exchange. In such cases, on the sale deed being executed and registered, the registration receipt (which is issued by the Sub-Registrar) authorizing the holder thereof to receive the registered sale deed on completion of the registration

formalities, is received and retained by the vendor and is not given to the purchaser. The vendor who holds the Registration receipt will either receive the registered document and keep the original sale deed in his custody or may keep the registration receipt without exchanging it for the registered document from the sub-Registrar, till payment of consideration is made. When the purchaser pays the price (that is the whole price or part that is due) on or before the agreed date, he receives in exchange, the registration receipt from the vendor entitling him to receive the original registered sale deed, as also the possession. If the payment is not made as agreed, the vendor could repudiate the sale and refuse to deliver the registration receipt/registered document, as the case may be, which is in his custody, and proceed to deal with the property as he deems fit, by ignoring the rescinded sale. The prevalence of this practice in Bihar is noticed and recognized in several reported decisions - the decision of this Court in Bishundeo Narain Rai (supra) and the decisions of the Patna High Court in [Sarjug Saran Singh vs. Ramcharitar Singh](#) (1968 BLJR 74), [Shiva Narayan Sah vs. Baidya Nath Prasad Tiwary](#) (AIR 1973 Patna 386), [Baldeo Singh vs. Dwarika Singh](#) (AIR 1978 Patna 97), which explain the practice of ta khubzul badlain, after relying upon the principles laid down in the earlier decisions of that court in [Md. Murtaza Hussain vs. Abdul Rahman](#) (AIR 1949 Patna 364), [Motilal Sahu vs. Ugrah Narain Sahu](#) (AIR 1950 Patna 288), and [Panchoo Sahu v. Janki Mandar](#) (AIR 1952 Patna 263)."

In the present case, neither such practice has been pleaded nor proved. As noticed earlier, the sale deed executed is also does not have clause to this effect. On receipt of the cheque, execution of sale deed and registration thereof, title passed on to the purchaser.

In these circumstances, there is no scope for interference with the concurrent finding of fact arrived at by the Courts below.

Appeal is dismissed.

26.07.2018

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No