

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.510 of 2003**

1. Rajau Ram, aged about 61 years, S/o Late Girdhari Lal Sahu,
2. Tejau Ram, aged about 57 years, S/o Late Girdhari Lal Sahu

Both R/o village Parkhanda, PO Parkhanda, Tahsil Kurud, Distt. Dhamtari (CG)

---- Appellants

Versus

1. Rajaram, aged about 65 years, S/o Girdhari Lal Sahu,
2. Mahesh Kumar, aged about 25 years, S/o Rajaram Sahu,
3. Khilesh Kumar, aged about 30 years, S/o Rajaram Sahu,
4. Peetamber, aged about 40 years, S/o Rajaram Sahu,

All R/o village Parkhanda, PO. Parkhanda, Tahsil Kurud, Distt. Dhamtari (CG)

5. State of Chhattisgarh through the Collector Dhamtari, Distt. Dhamtari (CG)

---- Respondents

For Appellants	:	Mr.Vishnu Koshta and Mr.Shobhit Koshta, Advocates
For Respondents No.1 to 4	:	Mr.B.D.Guru, Advocate
For Respondent No.5	:	Mr.Vimlesh Bajpai, G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

31/01/2019

1. The substantial questions of law involved, formulated and to be answered in the second appeal preferred by the plaintiffs are as under:-

“1. Whether the lower Appellate Court has committed an error in law in reversing the judgment and decree passed by the Trial Court and in not properly appreciating the evidence that have come before the

Court ?”

“2. Whether the finding of the lower Appellate Court in holding that the Civil Suit No.281A/86 decided on 17.08.09 belongs to the same dispute which has been decided and therefore consequence of res judicata would apply is an erroneous finding ?

3. Whether the first Appellate Court justified in holding that without any evidence that Girdhari received a sale consideration amount from respondent No.2 to 4 the sale deed is proper as per provision of Registration Act ?”

[For the sake of convenience, the parties would be referred hereinafter as per their status shown and ranking given in the suit before the trial Court].

2. The suit property was owned by Shri Girdhari Lal, who sold the suit property to defendants No.2 to 4 by registered sale deeds dated 20.3.98 and 30.10.99 and thereafter he died on 8.4.2000. After his death, his two sons namely Rajau and Tejau/plaintiffs herein filed a suit for declaration of title and permanent injunction against defendants No.2 to 4, who are grandsons of Girdhari Lal stating inter-alia that sale deeds have been fraudulently executed by Girdhari Lal in favour of defendants No.2 to 4 without payment of consideration in which they have 2/3rd share in the suit property. Therefore, the decree for possession and permanent injunction be granted in their favour.
3. The defendants filed their written statement stating inter-alia that the suit property fell in share of Girdhari Lal on partition dated 11.3.85

(Ex.P/1), he was entitled to alienate the suit property in favour of defendants No.2 to 4 and has rightly been alienated on passing of consideration amount. Therefore, the suit deserves to be dismissed. The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 30.11.2002, decreed the suit, which was reversed by the First Appellate Court in appeal preferred by the defendants. Questioning legality and validity of the judgment and decree passed by the First Appellate Court, this second appeal under Section 100 of the CPC has been filed by the appellants/plaintiffs, in which substantial questions of law have been framed by this Court, which have been set-out in opening paragraph of this judgment.

4. Mr.Shobhit Koshta, learned counsel for the appellants/plaintiffs, would submit that the First Appellate Court is absolutely unjustified in setting aside the decree granted by the trial Court and granting the appeal, as such, the judgment and decree of the First Appellate Court deserves to be set aside and the decree of the trial Court be restored.
5. On the other hand, Mr.B.D.Guru, learned counsel for respondents No.1 to 4/defendants, would support the impugned judgment and decree.
6. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
7. By Ex.P/1 admittedly the suit property fell in share of Girdhari Lal,

father of the plaintiffs and defendant No.1 and he sold the suit property in favour of his grandsons i.e. defendants No.2 to 4 by registered sale deeds dated 20.3.98 and 30.10.99 and thereafter he died on 8.4.2000. After death of Girdhari Lal, the present plaintiffs filed a suit for the aforesaid reliefs on 20.6.2000. The trial Court decreed the suit, but the First Appellate Court did not accept the finding of the trial Court and reversed that finding. Once the suit property fell in share of Girdhari Lal by Ex.P/1 i.e. memorandum of partition, he was entitled to alienate that property in favour of defendants No.2 to 4, which cannot be disputed by the plaintiffs. Even otherwise, it is not the case of the plaintiffs that Girdhari Lal never intended to transfer the suit land in favour of defendants No.2 to 4. It is their case that sale consideration has not been passed to Girdhari Lal.

8. Section 54 of the Transfer of Property Act, 1882 (hereinafter called as “TP Act”) 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.”

9. The Supreme Court in the matter of Vidhyadhar (supra) while considering Section 54 of the Transfer of Property Act 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 Rs.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 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*¹, 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

¹ 1973 All LJ 412

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 present 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."

- 10.** The Supreme Court in the matter of Muddasani Venkata Narsaah (supra) has held that the passing of consideration under a sale deed cannot be questioned by third party. It was held as under:-

"It is also settled law that passing of consideration under a sale deed cannot be questioned by third party. Defendant 3 has not been able to establish her case that she is an adopted daughter of the deceased Yashoda and thus, she being the third party, could not have questioned the execution of the sale deed by Buchamma on the ground of passing of consideration as rightly laid down by the High Court of Madhya Pradesh in Ramjilal Tiwari v. Vijay Kumar². The High Court of Patna has also held that passing of consideration can be questioned by a party or his representatives in Akli v. Daho³. Similar is the view of the High Court of Nagpur in Maroti Bansi Teli⁴. Thus, High Court has erred in law on this ground also in dismissing the suit."

- 11.** The Full Bench of the Allahabad High Court in the matter of Dip Narain Singh v. Nageshar Prasad⁵ 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.

- 12.** The question for consideration would be whether sale consideration has been paid to Girdhari Lal or not was not proved by the plaintiffs as original sale deeds dated 20.3.98 and 30.10.99

² 1969 SCC Online MP 55

³ 1927 SCC Online Pat 200

⁴ 1943 SCC Online MP 128

⁵ ILR 52 All 338; AIR 1930 All 1 FB

were neither produced nor they were marked as exhibit. Even witnesses to the sale deeds have not been examined to prove that no consideration has been passed, as such, the plaintiffs were obliged to file the sale deeds and to prove by examining the witnesses to the sale deeds that sale consideration has not been passed to Girdhari Lal, as such, it has not been proved that Girdhari Lal never intended to transfer the suit land in favour of defendants No.2 to 4 and it has also not been proved that sale consideration has not been passed to Girdhari Lal, as such, the plaintiffs have failed to prove their case. The First Appellate Court is absolutely justified in setting aside the decree granted by the trial Court in which I do not find any illegality or perversity. The substantial questions of law are answered accordingly.

13. Accordingly, the second appeal deserves to be and is hereby dismissed leaving the parties to bear their own cost(s).

14. A decree be drawn up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge