

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 504 of 2006**

1. Jageshwar, Aged about 43 years, S/o. Late Lalla Prasad Pandey,
2. Indreshwar, Aged about 29 years, S/o. Late Lalla Prasad Pandey,
3. Kuber, Aged about 26 years, S/o. Lalla Prasad Pandey,
4. Jeevrani Bai, Aged about 70 years, Wd/o. Late Lalla Prasad Pandey,

All above R/o. Village Akoli, Pasmandar, P.H. No. 93, Dharseeva, Tahsil and District Raipur (C.G.)

----- Appellants/Plaintiffs

Versus

1. Smt. Rampyari Bai, Aged 40 years, W/o. Ganga Singh Thakur, R/o. Gandhi Chowk, Near Kanji house, Raipur (Chhattisgarh)
 2. State of Chhattisgarh, Through : Collector, Raipur (C.G.)
 3. Bhagwat, Aged 33 years, S/o. Firtu Ram Sen,
 4. Baijoram, Aged 31 years, S/o. Firtu Ram Sen,
 5. Prem Narayan, Aged 28 years, S/o. Firtu Ram Sen,
 6. Lukesh Kumar, Aged 24 years, S/o. Firtu Ram Sen,
 7. Ganga Bai, Aged 34 years, Wd/o. Romnath Sen,
- Resp. No. 3 to 7 all R/o. Village Akoli, Near Mandhaar, Police Station Dharseeva, Tahsil & District Raipur (Chhattisgarh)

----- Respondents/defendants

 For Appellants : Mr. Manoj Paranjpe, Adv.
 For Respondent No. 1 : None present.
 For Respondent No. 2 : Mr. Akash Pandey, PL

Hon'ble Shri Justice Sanjay K. Agrawal

Judgement On Board

01/10/2019

(1) The substantial question of law involved, formulated and to be answered in this second appeal preferred by plaintiffs states as under:

“Whether the two Courts below have given a perverse finding in respect of sale deeds dated 26.11.1987 and 1.12.1995 having validly proved or not ?”

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

(2) The imperative facts required to be noticed for adjudication of this appeal are as under:

(2.1) The suit property was originally held by Lalla Prasad Pandey, father of the plaintiffs herein. He sold the suit land in favour of defendant No. 1 by registered sale deed dated 26.11.1987 and delivered peaceful possession thereof and, thereafter, defendant No. 1 sold the suit land in favour of defendant No. 3 by registered sale deed dated 1.12.1995 and delivered peaceful possession to her. Thereafter, the plaintiffs filed a civil suit for declaration that sale deeds dated 26.11.1987 and 1.12.1995

both are illegal, ineffective, void and not binding on the plaintiff on the ground that their father – Lalla Prasad Pandey had no right or authority to alienate the suit land in favour of defendant No.1, which was opposed by defendant No. 1, by filing written statement, stating therein that defendant No. 1 has rightly alienated the suit property in favour of defendant No. 3 by registered sale deed dated 1.12.1995 and, therefore, the suit filed by the plaintiff deserves to be dismissed.

(2.2) The trial Court, upon appreciating the oral and documentary evidence available on record, dismissed the suit finding no merit, which was affirmed by the first appellate Court by its impugned judgment & decree dated 31.08.2006, against which this second appeal has been preferred by the appellants/plaintiffs in which the substantial question of law has been formulated and set out in the opening paragraph of the judgment.

(3) Learned counsel for the appellants/plaintiffs would submit that both the courts below have concurrently erred in dismissing the suit of the plaintiffs ignoring the fact that the sale deed was got executed by defendant No. 1 misrepresenting the fact as power of attorney was issued by father of plaintiffs in favour of father of defendant No. 1 i.e. Ganga Prasad on 26.11.1987 (Ex.P-19) and by misrepresenting the facts, apart from the power of attorney,

the sale deed was also got executed in favour of defendant No. 1, as such, the sale deed dated 26.11.1987 and 1.12.1995 both are illegal and ineffective , which both the courts below did not accept, as such, judgment and decree passed by both the courts below are liable to be set aside.

(4) None for respondent No. 1, though served.

(5) I have heard learned counsel appearing for the appellants/plaintiffs and considered his submissions and went through the record with utmost circumspection.

(6) Original plaintiff – Lalla Prasad Pandey, who died during pendency of the suit, had executed sale deed in favour of defendant No. 1 on 26.11.1987 transferring title in her favour and, thereafter, on 1.12.1995, the defendant No. 1 has transferred the suit land in favour of defendant No. 3 and had given peaceful possession to her, which the plaintiff challenged, by filing civil suit on 26.07.1991, only seeking declaration that defendants No. 1 & 3 have no title over the suit land and the sale deeds dated 26.11.1987 & 1.12.1995, both are ineffective and not binding on the plaintiff.

(7) It is the case of original plaintiff – Lalla Prasad Pandey that his power of attorney- Ganga Singh Thakur fraudulently got the sale deed executed on behalf of the plaintiff without making payment of consideration amount, therefore, no title has been transferred in favour of

defendant No. 1 and, thereafter, by subsequent transfer to defendant No. 3. It is not the case of original plaintiff that he never intended to transfer the suit land in favour of defendant No.1 whereas both the courts below have recorded a finding that the original plaintiff intended to transfer the suit land in favour of defendant No.1 and thereafter defendant No. 1 transferred the title in favour of defendant No. 3 .

(8) The original plaintiff has only pleaded that for want of consideration, the sale deed executed by him in favour of defendant No. 1 is void and ineffective, which both the courts below have not accepted.

(9) The question for consideration would be whether non-payment of consideration would render the sale deed dated 26.11.1987 and 1.12.1995 null and void ?

(10) 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."

(11) The Supreme Court in the matter of Vidhyadhar v. Manikrao and another¹ 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,

1 (1999) 3 SCC 573

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."

(12) The Supreme Court in the matter of Muddasani Venkata Narsaah (dead) Through legal Representatives v. Muddasani Sarojana³ 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

² 1973 All LJ 412

³ (2016) 12 SCC 288

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 Kumar**⁴. The High Court of Patna has also held that passing of consideration can be questioned by a party or his representatives in **Akli v. Daho**⁵. Similar is the view of the High Court of Nagpur in **Maroti Bansi Teli**⁶. Thus, High Court has erred in law on this ground also in dismissing the suit."

(13) The Full Bench of the Allahabad High Court in the matter of **Dip Narain Singh v. Nageshar Prasad**⁷ observed that once a document transferring immovable property has been duly executed, 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.

(14) 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 the price paid or promised to be paid. But whether the vendor really intended to transfer the ownership by mere execution and registration or contracted to do so only after receipt of the consideration as a

4 1969 SCC Online MP 55

5 1927 SCC Online Pat 200

6 1943 SCC Online MP 128

7 ILR 52 All 338; AIR 1930 All 1 FB

condition precedent, would depend upon the terms of the contract.

(15) Reverting to the facts of the present case, it is quite vivid that plaintiff himself has executed Sale deed in favour of defendant No. 1 on 26.11.1987 after accepting the consideration amount and by delivering the peaceful possession to defendant No. 1 and after the suit land was transferred by defendant No. 1 in favour of defendant No. 3, the plaintiff has filed civil suit alleging that consideration amount has not been paid. It is not the case of the original plaintiff that he had never intended to transfer the suit land in favour of defendant No. 1. The recital in the sale deed admits no doubt that he had intended to transfer the title in favour of defendant No. 1 on the date of execution of sale deed, as such, both the courts below have rightly concluded that the plaintiff has failed to plead and establish the invalidity of the sale deeds and, therefore, rightly declined to declare the sale deeds dated 26.11.1987 and 1.12.1995 as void and ineffective. There is one more reason for not interfering with judgment and decree of both the courts below that the plaintiff is admittedly party to the sale deed and he has executed a sale deed in favour of defendant No. 1 but he has merely sought declaration that the sale deeds are void and ineffective. Since the plaintiff is party to the sale deeds,

he ought to have sought cancellation of the sale deeds under Section 31 of the Specific Relief Act, 1963, therefore, both the courts below have rightly dismissed the suit of the plaintiff seeking declaration that sale deeds dated 26.11.1987 and 1.12.1995 to be void and ineffective, which is neither perverse nor contrary to the record. Substantial question of law is answered accordingly.

(16) The second appeal, being devoid of merit, is liable to be and is hereby dismissed leaving the parties to bear their own costs.

(17) A decree be drawn up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

