

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
Second Appeal No. 320 of 2005

Foujdar Singh, Aged about 55 years, S/o Dilip Singh Gond,
 R/o Village, Betalo, Post Office Jatga, Tahsil Katghora, Distt.
 Korba, Chhattisgarh.

---- Appellant/Defendant No. 2

Versus

1. Dadu Singh S/o Raghuvir (died) through Lrs.

1.A. Bund Kuwar, Wife of Dadu Singh, Aged about 56 years.

1.B. Indrapal Singh, S/o Dadu Singh, Aged about 45 years.

1.C. Sahdeo Singh S/o Dadu Singh, Aged about 40 years.

1.D. Jagdeo Singh, S/o Dadu Singh, Aged about 32 years.

1.E. Mandeo Singh S/o Dadu Singh, Aged about 30 years.

Respondent No. 1A to 1E R/o Village Betalo, Post Office
 Jatga, Tahsil Katghora, District Korba, Chhattisgarh.

2. Pratapi Singh S/o Raghuvir Singh (died)

3. Sonsai, Aged about 30 years, S/o Raghunath Gond.

All R/o Village Betalo, Tahsil Katghora, District Korba,
 Chhattisgarh.

--- Plaintiffs

4. Fulkunwar, Aged about 50 years, W/o Dilip Singh Gond, R/o
 Village Betalo, Tahsil Katghora, Distt. Korba, Chhattisgarh.

5. Shivratan, Aged about 45 years.

6. Chandrabhan, Aged about 30 years.

7. Tribhuwan Singh, Aged about 25 years.

8. Suhaval Singh, Aged about 19 years.

9. Santkumar, Aged about 15 years.

10. Shivkumar, Aged about 12 years.

All legal representatives of Dilip Singh and respondent No. 9
 and 10 are minor through the legal guardian Smt. Fulkunwar,
 Aged about 50 years, W/o Dilip Singh R/o Village Betalo,

Tahsil Katghora, Distt. Korba, Chhattisgarh.

11.State of Chhattisgarh, through Collector, Korba, Distt. Korba,
Chhattisgarh.

----Respondents

For Appellant	:	Mr. Shobhit Koshta, Advocate
For Respondents No. 1 & 3	:	Mr. H.S. Patel, Advocate
For Respondent No. 11/State	:	Mr. Akash Pandey, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal
Judgment On Board

19.09.2019

1. The substantial question of law involved, formulated and to be answered in this second appeal preferred by defendant No. 2 states as under :

“Whether sale deed dated 22/03/1993
conferred title on appellant ?”

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

2. The suit property originally belonged to Ram Singh who died in the year 1980. After the death of Ram Singh, the suit property was succeeded by his wife i.e. original defendant No. 1 namely Parbatiya Bai, who sold the suit property to defendant No. 2 – Foujdar Singh by registered sale deed dated 22/03/1993 (Exhibit P/3). Parbatiya Bai died in the year 1995, but during her lifetime, on 09/12/1994, civil suit No. 8-A/2002 was instituted by three plaintiffs namely Dadu Singh,

Pratapi Singh and Raghunath Singh, who were brothers of Ram Singh, alleging *inter alia* that Parbatiya Bai had limited right over the suit property, therefore, the sale of suit property by Parbatiya Bai to defendant No. 2 – Foujdar Singh has not conferred any title to defendant No. 2 and also for the reason that no consideration amount has been paid by defendant No. 2 – Foujdar Singh to Parbatiya Bai therefore, the sale deed dated 22/03/1993 (Exhibit P/3) executed by Parbatiya Bai in favour of Foujdar Singh is void and not binding on the plaintiffs.

3. By way of filing his written statement, defendant No. 2 – Foujdar Singh set up a plea that Parbatiya Bai had full right to transfer the suit property in his favour and the sale consideration amount has been paid to her, as such, title over the suit property has been transferred in his favour. Defendant No. 2 – Foujdar Singh also set up a counterclaim for permanent injunction.
4. Learned trial Court, after appreciating the oral and documentary evidence on record, dismissed the civil suit vide judgment and decree dated 18/07/2003 holding that the parties to the civil suit are members of 'Scheduled Tribes' by caste, as such, provisions of Hindu Succession Act, 1956 would not be applicable but Parbatiya Bai had limited right over the suit property and since, Parbatiya Bai had limited right over the suit property therefore, the sale executed by her in favour of defendant No. 2 – Foujdar Singh is not binding on the plaintiffs.

5. Against the said judgment and decree passed by the trial Court, defendant No. 2 – Foujdar Singh preferred civil appeal No. 20A/2004 under Section 96 of the CPC wherein learned first appellate Court affirmed to the findings recorded by the trial Court and held that Parbatiya Bai, being a member of 'Scheduled Tribe', had only limited right over the suit property therefore, she had no right to alienate the suit property in favour of defendant No. 2 – Foujdar Singh and further held that payment of the amount of sale consideration to Parbatiya Bai is also doubtful and in that view of the matter, learned first appellate Court dismissed the appeal vide judgment and decree dated 04/04/2005.
6. Questioning the said judgment and decree of the first appellate Court, this second appeal has been preferred by the defendant No. 2/appellant herein under Section 100 of the CPC in which substantial question of law was formulated on 25/07/2005 and is set out in the opening paragraph of this judgment.
7. Mr. Shobhit Koshta, learned counsel for defendant No. 1/appellant herein would submit that both the Courts below are absolutely unjustified in holding that Parbatiya Bai had limited right over the suit property as admittedly, her husband namely Ram Singh died in the year 1980 and thereafter, she inherited the suit property and sold it to defendant No. 2 – Foujdar Singh and further submits that both the Courts below have legally erred in holding that merely because of non-applicability of provisions contained in Hindu Succession Act,

1956, Parbatiya Bai had limited right over the suit property and also erred in holding that non-payment of sale consideration amount, if any, would not confer defendant No. 2's title over the suit property, therefore, the judgment and decree passed by the both the Courts below is liable to be set aside and the second appeal deserves to be allowed.

8. Mr. H.S. Patel, learned counsel for plaintiffs/respondents No. 1 and 3 would vehemently argue against the submissions made by learned counsel for defendant No. 2/appellant and support the judgment and decree passed by both the Courts below.

9. Both the Courts below have concurrently recorded a finding that parties are aboriginal tribe by caste and therefore, the provisions of Hindu Succession Act, 1956 would not be applicable to them and the parties were required to prove custom for their succession and inheritance which the plaintiffs have failed to establish. Thereafter, both the Courts below have surprisingly held that since provisions of Hindu Succession Act, 1956 is not applicable to the parties, therefore, Parbatiya Bai would inherit the property of her husband i.e. the suit property as a limited owner. Ram Singh admittedly, was the owner of the suit property but he died in the year 1980 and immediately after his death, Parbatiya Bai inherited the suit property with full right as the plaintiffs have failed to prove and establish that in their customary law of succession, a widow does not get full right over the property of her husband and gets only limited right, therefore, the

finding recorded by both the Courts below that merely because she is a member of aboriginal tribe, she would inherit the property of her husband as a limited owner ignoring the mandate of Section 14 of the Hindu Succession Act, 1956, though the said provision is not strictly applicable to the parties herein and in absence of pleading and proof that in their customary law of succession, a widow gets limited right over the property of her husband is absolutely perverse. The right to property is a constitutional right and one cannot be deprived of it only on the ground that he/she belongs to aboriginal tribe.

10. Article 300A clearly mandates that no person shall be deprived of his property save by authority of law. Right to property is still a constitutional right though it is no longer a fundamental right. Therefore, the findings recorded by both the Courts below that merely because Parbatiya Bai is a member of the aboriginal tribe, she would not have full right over the suit property even if she has inherited the suit property after the death of her husband is a finding of fact which is absolutely perverse and contrary to record which is liable to be and is hereby set aside.

11. Now, coming to the substantial question of law so framed that whether the sale deed dated 22/03/1993 (Exhibit P/3) conferred title over the suit property to defendant No. 2 – Foujdar Singh.

12. The sale deed in question is a registered sale deed (Exhibit P/3) executed by Parbatiya Bai in favour of defendant No. 1/appellant herein. Both the Courts below have held that since the sale consideration has not been paid by defendant No. 2 to Parbatiya Bai, therefore, the sale is not binding on the plaintiffs.

13. The question for consideration would be whether the alleged non-payment of sale consideration would render the sale deed dated 22/03/1993 (Exhibit P/3) as void and would not be binding on the plaintiffs.

14. 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.”

15. The Supreme Court, in the matter of ***Vidhyadhar v. Manikrao and another***¹, 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 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

1 (1999) 3 SCC 573

2 1973 All LJ 412

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.”

16. 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 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

3 (2009) 4 SCC 193

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.”

17. The Full Bench of the Allahabad High Court in the matter of ***Dip Narain Singh v. Nageshar Prasad***⁴ 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.
18. 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 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.
19. Reverting to the facts of the present case in light of the legal position *qua* Section 54 of the Transfer of Property

4 ILR 52 All 338; AIR 1930 All 1 FB

Act, 1882, it is quite vivid that it is the case of the plaintiffs that sale deed was executed without payment of consideration amount. It is not the case of the plaintiffs that Parbatiya Bai never intended to transfer the suit property in favour of defendant No. 2. The only allegation of the plaintiffs is that the alleged alienation of the suit property made by Parbatiya Bai in favour of defendant No. 2 is without payment of consideration amount.

20. The Supreme Court, in the matter of Vidhyadhar (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 deed dated 22/03/1993 (Exhibit P/3) executed by Parbatiya Bai in favour of defendant No. 2 – Foujdar Singh is void and not binding on the plaintiffs.

21. Plaintiffs have failed to establish that Parbatiya Bai never intended to transfer the suit property in favour of defendant No. 2 and have further failed to prove that consideration amount has not been paid to Parbatiya Bai.

22. 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.”

23. 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.

24. 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.”

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

25. 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 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.”

26. In view of the aforesaid legal analysis, it is quite vivid that the remedy available to the plaintiffs, if any, was to bring the suit for consideration amount (if any) as sale of the suit property cannot be declared void for alleged non-payment of consideration amount. Both the Courts below are absolutely unjustified in holding that sale of the suit property made by Parbatiya Bai in favour of defendant No. 2 – Foujdar Singh by registered sale deed dated 22/03/1993 (Exhibit P/3) has not conferred any title to defendant No. 2/appellant herein rather title over the suit land has been fully conferred to defendant No. 2. In view of that judgment and decree passed by both the Courts below are hereby set aside and the suit of the plaintiffs stands dismissed. Consequently, the substantial question of law is answered in favour of defendant No. 2/appellant herein and against the plaintiffs.

27. Accordingly, the second appeal is allowed to the extent indicated herein-above. Parties to bear their own cost(s).

28. A decree be drawn up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet