

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 51 of 2016

Reserved on : 01.08.2019

Delivered on : 04.10.2019

Smt. Geeta Roy, W/o Shri P.K. Roy, aged about 59 years, Power of attorney holder Shri P.K. Roy, S/o Late Shri D.P. Roy, aged about 67 years, R/o Bangalipara, Gali No. 01, New Sarkanda, P.S. Sarkanda, Tahsil- Bilaspur, Revenue and Civil District- Bilaspur (C.G.)

---- Appellant

Versus

1. Manoj Bithalkar, S/o M.M. Bithalkar, aged about 49 years, Partner Firm Sapient Net Technologies O/C -14, Telipara, Bajrang Complex, Bus Stand, Telipara Road, Bilaspur, R/o Bhartiya Nagar, Near Income Tax Office, Tenant of house of Shri K.K. Mishra, L.I.C. Agent, P.S. Civil Line, Revenue and Civil District- Bilaspur (C.G.)
2. Smt. Meera Manoj Bithalkar, W/o Manoj Bithalkar, aged about 42 years, Partner Firm Sapient Net Technologies O/C- 14, Telipara, Bajrang Complex, Bus Stand, Telipara Road, Bilaspur, R/o Bhartiya Nagar, Near Income Tax Office, Tenant of house of Shri K.K. Mishra, L.I.C. Agent, P.S. Civil Line, Revenue and Civil District- Bilaspur (C.G.)
3. M/s Sapient Net Technologies O/C-14, Telipara, Bajrang Complex, Bus Stand, Telipara Road, Bilaspur, R/o Bhartiya Nagar, Near Income Tax Office, Tenant of house of Shri K.K. Mishra, L.I.C. Agent, P.S. Civil Line, Revenue and Civil District- Bilaspur (C.G.)
4. State of Chhattisgarh, Through Collector, Bilaspur, District- Bilaspur (C.G.)

---- Respondents

For Appellant	:	Mr. Prakash Tiwari, Advocate.
For Respondent No. 1 to 3	:	None.
For State/ Respondent No. 4	:	Mr. Afroj Khan, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This first appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against judgment/ decree dated 30.11.2015 passed by Seventh Additional District Judge, Bilaspur (C.G.) in Civil Suit No. 76-A/2014, wherein the said court dismissed the suit filed by the appellant/plaintiff for declaring sale-deed void executed on 27.05.2005 by P.K. Roy/ Power of Attorney Holder of the appellant in favour of respondent No. 1 for land bearing Survey No. 559/1छ and 559/1ज, area admeasuring 0.68 acres and for declaring title of the appellant and for delivery of possession of the said land.
2. As per the appellant, on the basis of power of attorney, husband of the appellant executed an agreement to sell the land in question in lieu of Rs. 20 lacs per acre. Eights cheques were issued to the tune of Rs. 5,44,000/- for consideration amount, but the cheques were dishonoured and in consequences, the sale-deed became *void ab initio*, therefore, the appellant filed a suit before the trial court, but the trial court dismissed the suit contrary to the factual and legal aspect of the matter.
3. Learned counsel for the appellant submits as under:-
 - (i) The land in question is Survey No. 559/1छ and 559/1ज area 0.68 acres situated at Village- Khamtarai, Patwari Halka No. 17, Revenue Circle- Bilaspur, Tahsil & District- Bilaspur. The appellant entered into an agreement with the respondents to sell the property, thereafter, the sale-deed was executed on 27.05.2005.
 - (ii) Cheques were issued in favour of the appellant, but no cheque

was honoured by the bank because of insufficient fund.

(iii) The appellant filed a complaint under Section 138 of the Negotiable Instrument Act, 1881 before the trial court and after trial, the respondent was sentenced to undergo R.I. for one year and to pay fine of Rs. 5,44,000/-, but no amount was recovered from the respondent.

(iv) Consideration of the sale is not paid, therefore, the sale-deed is without consideration and it should be declared void.

(v) The suit is filed for recovery of possession on the basis of title for which limitation is 12 years as per Article 65 of the Limitation Act, 1963.

(vi) As no consideration was paid to the appellant, the document is *void ab initio*. The document which is void, is not required to be cancelled, but declaration of being void is sufficient and possession should be delivered to the appellant.

(vii) The trial court has not evaluated the evidence in its true perspective, therefore, the finding arrived at by the trial court is liable to be set aside.

4. Respondent No. 1 to 3 are unrepresented and no argument is advanced on their behalf.
5. First question for consideration before this Court is as to what is the consideration amount for property in question. The sale-deed in question is Ex. P/3. In the sale-deed, the consideration amount is mentioned as Rs. 1,50,000/- while in the plaint, the consideration

amount is mentioned as Rs. 12,10,000/- at one state and Rs. 5,44,000/- is mentioned in another stage. Details of post dated cheques is as below:-

S.No.	Cheque No.	Amount	Date
1	059508	60,000/-	20.08.2005
2	059509	75,000/-	05.09.2005
3	059510	75,000/-	20.09.2005
4	059511	75,000/-	05.10.2005
5	059512	75,000/-	20.10.2005
6	059513	1,50,000/-	05.11.2005
7	059514	1,50,000/-	20.11.2005
8	059515	1,50,000/-	05.12.2005
9	059516	1,50,000/-	20.12.2005
10	059517	1,50,000/-	05.01.2006
11	059518	1,00,000/-	20.01.2006
	Total	12,10,000/-	

Details of reissued cheques is as below:-

S.No.	Cheque No.	Amount	Date
1	059517	1,50,000/-	05.01.2006
2	059518	1,00,000/-	20.01.2006
3	129839	49,000/-	25.01.2006
4	129840	49,000/-	26.01.2006
5	129841	49,000/-	27.01.2006
6	129842	49,000/-	28.01.2006
7	129843	49,000/-	29.01.2006
8	129844	49,000/-	30.01.2006
	Total	5,44,000/-	

6. The total amount of Rs. 5,44,000/- was shown in the plaint, but in the sale-deed, the consideration amount is only Rs. 1,50,000/- for which

two cheques bearing No. 059505 & 059506 Rs. 75,000/- each was shown which is entirely different from the pleading. It is settled law that no amount of evidence to be looked apart from pleading. In the present case, the plaint allegations are entirely different from cheque number of sale-deed.

7. If Rs. 1,50,000/- is consideration amount for sale as per sale-deed Ex. P/3, it is not clear why the cheque for Rs. 5,44,000/- was issued as per the plaint. No one from the bank was called to establish that the cheques were dishonoured, therefore, it cannot be concluded that the cheques for consideration amount was dishonoured. It cannot be held that the cheques for consideration amount was dishonoured by bank and the appellant did not receive the consideration amount. Looking to the plaint averment and sale-deed, it is not clear that what was really the consideration amount, therefore, it cannot be held that the sale-deed was executed without consideration amount. If sale-deed is executed after paying consideration amount, the same cannot be cancelled.
8. The sale-deed is executed on 27.05.2005 as per Ex. P/3 and the suit for its cancellation is filed on 03.04.2014. The period of limitation for cancellation of sale-deed is three years from the date of execution of sale-deed as per Article 59 of the Limitation Act, 1963, therefore, the suit is hopelessly time barred. The appellant is party to the sale-deed which is valued to Rs. 1,50,000/-, but *ad valorem* court fee is not paid for cancellation of the sale-deed, therefore, the trial court opined that the suit is time barred and it is not properly valued and the court fee is

not properly paid. Again, the trial court recorded finding that it is not proved that which is the consideration amount paid to the appellant.

9. The trial court elaborately discussed the entire evidence and after reassessing the same, this court has no reason to record a contrary view. Argument advanced on behalf of the appellant is not liable to be sustained.
10. Accordingly, the appeal is liable to be dismissed. The decree is passed against the appellant and in favour of the respondents on the following terms and conditions:-
 - (i) The appeal is dismissed with cost.
 - (ii) Parties to bear their own costs.
 - (iii) Pleaders' fee, if certified be calculated as per certificate or as per schedule whichever is less.
 - (iv) A decree be drawn up accordingly.

Sd/-
(Ram Prasanna Sharma)
Judge