

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

940 SECOND APPEAL NO.146 OF 2022
WITH CA/3825/2022 IN SA/147/2022

WITH
SA/147/2022

GOVIND RAMVILASJI BAHETI AND OTHERS
VERSUS
JAWAHARLAL MADANLAL SARDA

...
Advocate for Appellants : Mr. Bora Satyajit S.
Advocate for the respondent : Mr. Swapnil S. Rath
...

CORAM : MANGESH S. PATIL, J.

DATE : 06 APRIL 2022

PC :

Heard both the sides.

2. The appellants are the original plaintiffs, LRs. of one Ramvilas, who executed the sale deed of the suit property in favour of the respondent by accepting a cheque which was subsequently dishonoured. They have filed suit seeking a declaration that the sale was void, the consideration having failed.

3. The respondent admitted the execution of the sale deed and dishonour of the cheque but contended that the balance consideration was paid subsequently in three instalments evidenced by three receipts.

4. The trial court upheld the stand of the appellants that the balance amount of consideration was not paid but it refused to grant any declaration, however, simultaneously held that even the respondent had failed to prove that the balance amount of consideration was paid in instalments. It decreed the suit partly. It refused declaration but directed the respondent to pay the balance amount of consideration together with interest.

5. The lower appellate court dismissed the appellants' appeal but allowed the cross-objection of the respondent and quashed and set aside the part of the decree passed by the trial court which directed payment of the balance amount of consideration.

6. The second appeals are **admitted** on the following substantial questions of law :

- I) Whether the lower appellate court was justified in insisting the appellants to prove that the receipts purportedly issued by Ramvilas were, in-fact, not issued by him even when except the respondent's testimony neither the witnesses on these receipts were examined nor were the receipts confronted to the appellants' witnesses ?
- II) Whether the judgments and orders holding that in spite of failure of consideration, the sale was subsisting is legally sustainable in view of the following judgments in :

- 1) **Vidyadhar Vs. Manikrao and another; (1999) 3 SCC 573**
- 2) **Dahiben Vs. Arvindbhai Kalyanji Bhanusali (Gajra) Dead through LRs. and others; (2020) 7 SCC 366**
- 3) **Kewal Krishan Vs. Rajesh Kumar and Ors.; AIR 2022 SC 564**

7. Considering the nature of the dispute, the respondent shall not create any third party interest in the suit property till decision of the second appeals.

8. Civil application no. 3825 of 2022 stands disposed of.

[MANGESH S. PATIL]
JUDGE

arp/