

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Partha Sarathi Chatterjee

FA 86 of 2022

Sri Subhendu Dutta & Anr.
versus
Madan Gopal Goswami

For the Appellants : *Mr. Bhaskar Ghosh*
Mr. Kartick Kumar Bhattacharya,
Ms. Shohini Chakraborty,
Ms. Prajaaini Das,
Ms. Soumashree Dutta.

For the Respondent : *Mr. Haradhan Banerjee,*
Mr. Gopal Chandra Ghosh,
Mr. Rajkrishna Mondal.

Hearing is concluded on : *24th January, 2023.*

Judgment On : **1st February, 2023.**

Tapabrata Chakraborty, J.

1. The present appeal has been preferred challenging the judgment and decree dated 8th December, 2021 passed by the learned Judge, 7th Bench, City

Civil Court at Calcutta in Money Suit No. 12756 of 2014 preferred by the plaintiff/respondent in the present appeal, being Madan Gopal Goswami (hereinafter referred to as Madan) against the defendants/appellants in the present appeal, being Subhendu Dutta (hereinafter referred to as Subhendu) and Subhas Chandra Dutta (hereinafter referred to as Subhas) stating *inter alia* that Subhas, his childhood friend, approached him to purchase a plot of land situated at village Mathrun, District- Burdwan in the name of his son being Subhendu. Upon negotiation, price was fixed at Rs.12,60,221/-. Prior to execution of the deed, Subhas paid Rs.10,000/- and Rs.5,000/- by two cheques in the month of April, 2010 and Rs.12,35,221/- remained due. On the assurance of Subhas and reposing trust and faith upon him, Madan executed and registered the sale deed in favour of Subhendu on 24th of May 2000. After the deed was executed, Subhash paid Rs.50,000/- and Rs.25,000/- by two separate cheques issued in the month of July, 2011 but thereafter no further payment was made. Aggrieved thereby, Madan issued a letter to Subhendu requesting him to pay the balance amount of Rs.11,60,221/- but in vain. However, in the midst thereof, Madan advanced an amount of Rs.4,30,000/- to Subhas. Such fact was also admitted by Subhas through a letter dated 24th December, 2013. On 27th December, 2013 Madan received a letter from Subhendu stating that he had paid the entire consideration amount of Rs.12,60,221/- at the time of registration. In the said conspectus, Madan was constrained to prefer the suit. In corroboration of the

facts stated in the plaint, Madan examined himself as PW1 and exhibited seven documents marked as Exhibit nos. 1 to 7.

2. Both Subhendu and Subhas entered appearance in the said suit and filed separate written statements denying and disputing the contention of Madan. Subhendu in his written statement categorically stated that the full consideration money was paid to Madan before execution and registration of the deed of conveyance and that such fact would be explicit from the recitals of the deed. He also stated that the Court had no jurisdiction to entertain the suit since the property in question is situated at Burdwan. The deed was executed in the month of May, 2010 and the suit, having been preferred three years thereafter in the year 2014, is barred by limitation. It was also contended that his father had been illegally impleaded though he had no connection with the transaction in question. The payments made by Subhas had no connection with the sale deed as executed on 24th May, 2010. In corroboration of the facts stated in the written statement, Subhendu examined himself as DW1 and exhibited the certified copy of the sale deed.

3. Subhas in his written statement stated that he was in no manner related with the transaction. For liquidating a loan of Rs.90,000/- advanced to him by Madan, he paid a sum of Rs.15,000/- on 21st April, 2010 by cheque dated 21st April, 2010, Rs.50,000/- by cheque dated 20th April, 2011 and Rs.25,000/- by cheque dated 15th July, 2011 all drawn on U.B.I. High Court Branch and such payment had no nexus with the sale deed. It was further stated that he was also advanced a loan of Rs.4,30,000/- by Madan which he

refunded by two cheques of Rs.2,50,000/- and Rs.1,80,000/- dated 12th September 2014 and 16th of April 2015 respectively.

4. On the basis of the above pleadings, the learned Judge framed the following issues:

- i. Is the suit maintainable in its present form and law ?*
- ii. Has the plaintiff cause of action to file the present suit against the defendants ?*
- iii. Is the suit barred by law of limitation ?*
- iv. Whether the defendants paid the entire consideration money to the plaintiff for selling the land under registered Deed of Conveyance dated 24.05.2010 ?*
- v. Is the plaintiff entitled to get a decree as prayed for?*
- vi. To what other relief/reliefs, if any, is the plaintiff entitled to?*

5. Mr. Ghosh, learned senior advocate assisted by Mr. Bhattacharya, learned advocate appearing for the appellants being Subhendu and Subhas submits that though the point of jurisdiction was categorically pleaded in the written statement, no such issue was framed by the learned Judge and the absence of such a material issue introduces considerations of prejudice and maligns the judgment.

6. Mr. Ghosh contends that though it was categorically pleaded in the plaint that no ownership had been conveyed to Subhendu by the deed as

without payment no ownership can be conveyed, there was no prayer in the suit towards cancellation of the deed.

7. He argues that Madan was conversant with bengali language and the deed was drawn up in the said language and in view thereof his contention that he put his signature without knowing the meaning and purport of the contents of the deed could not have been accepted. In the deed itself Madan had expressly and unequivocally acknowledged that the entire sale consideration was paid to him. The learned Judge erred in law and fact in decreeing the suit by shifting the burden of proving the case upon the defendants and calling upon them to prove that they have paid the money although the plaintiff failed to discharge his initial burden to prove that the consideration money was not paid. The rigors of proved execution and registration of the deed by Madan could not have been diluted solely on the basis of the pleadings that he executed the deed without receiving the entire consideration amount only on the assurance of Subhas. In support of such argument reliance has been placed upon the judgments delivered in the cases of *Thakur Bhagwan Singh versus Bishambar Nath (Minor)* reported in *AIR 1940 Privy Council 114*, *Ram Chand versus Chhunun Mal*, reported in *AIR 1925 Lahore 471* and in *Goli Ramaswami and another versus Narla Jagannadha Rao and others* reported in *AIR 1962 AP 94*.

8. He contends that the learned Judge erred in law and fact in arriving at a finding that Subhas was a necessary party though Subhas was not a party to

the deed of conveyance nor did he pay any amount pertaining to the transaction in question.

9. He further argues that the learned Judge erred in law in answering the issue of limitation in favour of the plaintiff without appreciating the recitals in the deed regarding payment of the entire consideration money read with article 53 of the Limitation Act.

10. *Per contra*, Mr. Banerjee learned advocate appearing for Madan submits that the point of jurisdiction was not urged by the defendants at the very inception and as such the learned Court below rightly discounted the objection that the Court had no jurisdiction to entertain the suit. Having not filed any application under Order 14 Rule 2 of the Code of Civil Procedure (hereinafter referred to as the Code) or under Order 7 Rule 11 of the Code before the learned Court below, the appellant is estopped from urging the said issue of jurisdiction at the appellate stage in view of the provisions of section 21 of the Code. It is also not a case of inherent lack of jurisdiction and as such it cannot be argued that the decree is void in law. In support of such contention reliance has been placed upon the judgments delivered in the cases of *Baharein Petroleum Company Limited. versus P.J. Pappu and another*, reported in *AIR 1966 Supreme Court 634* and *Subhash Mahadevasa Habib versus Nemasa Ambasa Dharmadas (Dead) By Lrs. and others*, reported in *(2007) 13 Supreme Court Cases 650*.

11. Mr. Banerjee argues that the non-payment of a part of the sale price would not affect the validity of the sale. Once the title in the property has already passed, even if the balance sale consideration is not paid, the sale cannot be invalidated on the said ground and such non-payment cannot be a ground for cancellation of the said deed. In support of such contention reliance has been placed upon the judgment delivered in the case of *Dahiben versus Arvinbhai Kalyanji Bhanusali (Gajra) DEAD through legal representatives and others*, reported in (2020) 7 Supreme Court cases 366.

12. Drawing the attention of this Court to the judgment impugned, Mr. Banerjee submits that Subhas appeared before the learned Court below through the same learned advocate of Subhendu and filed written statement and was present in the Court during evidence of Subhendu but he did not depose before the Court to discard the allegations levelled by Madan or in support of his written statement and in view thereof a presumption arises that the case set up by him is not correct. In support of such contention reliance has been placed upon a judgment delivered in the case of *Vidhyadhar versus Manikrao and another*, reported in (1999) 3 Supreme Court cases 573.

13. According to Mr. Banerjee, the judgments delivered in the cases of *Ram Chand (supra)*, *Thakur Bhagwan Singh (supra)* and *Goli Ramaswami (supra)*, upon which reliance has been placed by the appellants, are distinguishable on facts and even in a suit for recovery of unpaid consideration money, oral evidence would be admissible for the purpose of proving unpaid consideration amount. In support of such contention reliance has been placed

upon the judgments delivered in the cases of *Annada Charan Sil and another versus Hargobinda Sil and others*, reported in 27 CWN 496 and *Alok moy Banerjee and others versus Chatturanan Ghosh and another*, reported in 1981 CLJ 117.

14. In reply, Mr. Ghosh submits that in the present case, Subhas did enter appearance in the suit upon engaging a lawyer and filed a separate written statement and his son deposed in the suit. As such, there was no occasion to presume that the case set up by Subhas and his son, namely, Subhendu is not correct. The judgment delivered in the case of *Vidhyadhar (supra)* is, thus, distinguishable on facts. In the case of *Dahiben (supra)* the plaintiffs were not able to encash 30 cheques, they also failed to produce the returned cheques and in such circumstances it was observed that the plaintiffs may have other remedies in law for recovery of the balance consideration. The facts and circumstances involved in the present case are totally different from the case of *Dahiben (supra)*. The judgment delivered in the case of *Subhash Mahadevasa Habib (supra)* is also distinguishable on facts and in the present case, the City Civil Court had no territorial jurisdiction to decide the suit. The fact that an amount of Rs.25,000/- was paid to Madan prior to the execution of the sale deed was also not incorporated in the recitals of the deed and in the absence thereof, the proposition of law as laid down in the cases of *Annada Charan Sil (supra)* and *Alok moy Banerjee (supra)* are not applicable to the facts of the present case moreso when it had been the categorical contention of the appellants that the entire consideration money pertaining to the deed was paid

to Madan on the date of execution and all other payments made by cheques were pertaining to loans advanced to the appellants and had no nexus with the sale deed.

15. It is well known that a decision is an authority for what it decides and not what can logically be deduced therefrom. Even a slight distinction in fact or an additional fact may make a lot of difference in decision making process. There is no dispute as regards the proposition of law laid down in the judgments cited by the respective parties but the application of such proposition is certainly dependant on the specific facts and circumstances of the respective cases. The judgment is a precedent for the issue of law that is raised and decided and not observations made in the facts of any particular case. Plentitude of pronouncements leaves cleavage in the opinions formed in the respective cases.

16. The proposition of law that can be culled out pertaining to maintainability of the suit, is that on the basis of the averments made in the plaint, the truth or otherwise whereof being immaterial, it has to be explicit that a part of cause of action has arisen within the jurisdiction of the Court. In the present case, cheques were handed over to Madan in the office of Subhas at 1-B, Old Post Office Street, Room No.4, Ground Floor, P.S. Hare Street, Kolkata -70001. Such categoric contention of Madan could not be dislodged by Subhendu and Subhas though in course of cross examination Subhendu went to the extent to state that he was not even aware as to whether his father '*has his business of lawership at 1B, Old Post Office Street or not*'. The learned court

below had discussed the issue in details and it is unnecessary for us to cover the same ground. Suffice it to say that we concur in his conclusion on the issue of cause of action and jurisdiction. It would be explicit from the judgment impugned that the parties were aware about the issue of jurisdiction and their arguments as advanced were considered in details and formal non-framing of such issue would be purely formal and technical. From the averments made in the plaint and the written statements, we are of the opinion that Madan was able to establish that a part of the cause of action had arisen within the jurisdiction of the Court and the Court had the jurisdiction to decide the dispute.

17. It is a fact that no application under Order 7 rule 11 or under order 14 Rule 2 of the Code was ever filed by the defendants. In the admitted absence of such steps and as Subhendu by a letter dated 27th December, 2013 refused to pay the balance consideration amount claiming that he had paid the full consideration money of Rs.12,60,221/- at the time of registration of the sale deed and as the suit was thereafter filed in the year 2014, the learned Court below rightly held that the suit was not barred by limitation.

18. It is true that Subhas was not a party to the sale deed. However, Subhas had admittedly issued four cheques in favour of Madan, two prior to execution of the deed and two after execution of the deed. From the proximity amongst the dates of the cheques and the date of execution of the deed, the relationship that Subhas had with Madan as a friend, it appears that Subhas was inextricably bound with the transaction in question and as such the

learned Judge rightly discounted the argument that Subhas was not a necessary party. The prayer of Madan for refund of the loan amount of Rs.4,30,000/- was turned down by the learned Court below and as such we need not delve with the said issue.

19. Indisputably, the sale deed was executed and registered on 24th May, 2010. In the said deed it was categorically stated by Madan that he was executing the deed upon receipt of the entire consideration money. In course of his cross-examination Madan had stated that *'without knowing the meaning and purports of that said sale deed in question I put my signatures therein'*. He added that *'I am quite aware and I know very well how to read and write in Bengali'*. He also deposed that *'I have not lodged any F.I.R. against the defendant no.1 for his non-payment of Rs.11,60,221/-'*. The rigors of such statements need to be tested and weighed with the statements as pleaded by the defendants and their conduct. The capacity of Subhendu to purchase the property was seriously questioned by Madan and in course of cross examination, Subhendu stated that *'I took Rs.6,60,221/- from my father, Subhas Chanda Dutt, Rs. 2,00,000/- from my uncle (Jethu), Satya Narayan Dutt, Rs. 2,00,000/- from my elder brother, Prosenjit Dutt and Rs. 2,00,000/- from my elder sister, Ruma Sen'*. He, however, miserably failed to produce any material in support of such statements. He also categorically stated that *'I have not challenged the valuation of the property made by the Registry office'* and that *'I have not given any amount before the registry of the deed. I gave the amount in the registry Office'*. He further stated that *'at the time of registration of the*

deed, Hakai Sekh, Imahuk Sekh were present and that *I gave payment of money to the plaintiff in front of them*. He also confirmed that *they will depose in this case*. In spite of such categorical statements, Subhendu failed to produce the said witnesses. In view thereof and coupled with the fact that though present in Court during evidence of Subhendu, Subhas did not depose before the Court to discard the allegations levelled by Madan or in support of his written statement, the learned Court below rightly drew an adverse inference against the defendants.

20. For the reasons discussed above, we do not find any infirmity in the judgment and decree impugned.

21. Accordingly, the appeal being FA 86 of 2022 is dismissed. The judgment and decree dated 8th December 2021 passed by the learned Judge, 7th Bench, City Civil Court at Calcutta in Money Suit No. 12756 of 2014 is affirmed.

22. Let a decree be drawn up accordingly.

23. Let a copy of this judgment along with LCR be sent down to the learned court below forthwith.

24. Urgent Photostat copy of this judgment, if applied for, shall be granted to the parties as expeditiously as possible, upon compliance of all formalities.

(Partha Sarathi Chatterjee, J.)

(Tapabrata Chakraborty, J.)