



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1521 OF 2019

Mr. Rameshkumar Jeetmal Bagaria HUF
Age: 66 years, Occu.: Agri. & Business,

Through Karta
Mr. Rameshkumar Jeetmal Bagaria
Proprietor of M/s. Bagaria Associated Agencies
Having its office at 5/105, Nityanand Nagar,
Swami Nityanand Marg, Opp. Andheri Railway
Station, Mumbai - 400069

Through Power of Attorney Holder
Mr. Ashwinikumar S/o. Rameshkumar Bagaria
Age: 33 years, Occu.: Business,
R/o. Guru Ramdas Nagar,
Aurangabad - 431 001

... Appellant
[Orig. Plaintiff]

VERSUS

Mr. Kailash S/o. Nanasaheb Pawar
Age: 52 years, Occu.: Agri., & Business
R/o. N-5, Satyam Nagar, CIDCO, Aurangabad.
Proprietor of Aditya Builders & Land Developers

... Respondent
[Orig. Defendant]

.....

Appearance :-

Mr. Shah Subodh P., Advocate for Appellant
Mr. R. R. Karpa h/f Mr. Y. R. Shinde, Advocate for Respondent

.....

**CORAM : R. G. AVACHAT &
NEERAJ P. DHOTE, JJ.**

**Reserved on : 2nd August, 2024
Pronounced On : 4th September, 2024**

JUDGMENT : [PER NEERAJ P. DHOTE, J.]

1. By the present Appeal under Section 96 of the Code of Civil Procedure, 1908 [hereinafter referred to as 'CPC'], the Original Plaintiff has challenged dismissal of the Special Civil Suit No.105/2016 vide Judgment and Order / Decree dated 14/02/2019 filed by him for adjudication of sale deed as voidable, its cancellation and possession of suit property. The parties are referred as per their status / nomenclature in the Suit.

2. The facts, giving rise to the present Appeal are as follows :-

[I] The Plaintiff instituted the above referred Civil Suit contending that, he executed the sale deed bearing No.8126/2015 for the total consideration of Rs.2,45,00,000/- [Rupees Two Crore Fourty Five Lakhs] on 21/12/2015 in favour of the Defendant in respect of the agricultural land bearing Gat Nos. 846, 847, 848 and 849, total admeasuring 4 Hectors, situated at village Bidkin, Taluka Paithan, District Aurangabad. On the date of execution of sale deed, the Defendant handed over the post-dated cheques to the Plaintiff and the Plaintiff handed over Form No.4 duly signed by him to the Defendant for the purpose of mutation, after realization of the cheque. The terms and conditions were incorporated in the sale deed. The Defendant was not authorized to execute the sale deed in respect of the suit land with third party before realization of the post-dated cheques. Default and failure to observe the terms and conditions of the sale deed, would result in automatic cancellation of the transaction and the amount paid by the Defendant will be forfeited without any notice and the

Defendant will have no right to claim refund of the amount nor any right over the suit property. Cheques were the essence of sale deed.

[II] On 01/01/2016, the Plaintiff submitted an Application to the Talathi, Bidkin Office requesting not to mutate the Defendant's name in the revenue records. After the cheque dated 30/01/2016 bearing No.312740 was encashed, the Plaintiff got the knowledge that the Defendant violated the terms and conditions of the sale deed by mutating his name in the revenue records without realization of the post-dated cheques. The Defendant removed one demand draft for Rs.85,00,000/- [Rupees Eighty Five Lakhs Only] and sent its copy to the Plaintiff. The Defendant illegally and with *mala fide* intention started obstructing the possession of Plaintiff over the adjacent remaining land. Thus, the Plaintiff approached the learned Civil Court with the aforesaid suit with the prayers as referred above in Paragraph No.1

[III] The Defendant responded to the Plaint by filing written statement at Exhibit - 28. He admitted the transaction with the Plaintiff in respect of the suit property by way of the aforementioned sale deed. However, he denied the case of Plaintiff. The total consideration amount was agreed for Rs.5,55,00,000/- [Rupees Five Crore Fifty Five Lakhs] and he paid the Plaintiff Rs.3,10,00,000/- [Rupees Three Crore Ten Lakh] in cash for the said transaction. The Plaintiff had encashed the cheques mentioned in the sale deed. After the execution of sale deed, he mutated his name in the revenue

records as the Plaintiff handed over the signed Form No.4 to him. The Plaintiff did not deposit the cheque of Rs.85,00,000/- [Rupees Eight Five Lakhs Only] with a view to create false litigation. The default was on the part of Plaintiff. The Defendant abided by all the terms and conditions mentioned in the sale deed. As the Plaintiff requested, he prepared the demand draft of Rs.85,00,000/- [Rupees Eight Five Lakhs Only] in the name of Plaintiff and sent the xerox copy to make the Plaintiff aware of the same. The sale deed created absolute rights in the Defendant. He was always ready and willing to perform his part of contract. With the *mala fide* intention, the Plaintiff created the litigation and prayed for dismissal of the Suit.

3. The learned Civil Court framed the issues, which are reproduced below with their findings:

Sr. Nos.	Issues	Findings
1.	Whether plaintiff proves that, sale deed dated 21 st December, 2015 is voidable at his option on account of breach of condition by the defendant ?	No
2.	Whether suit is within limitation for relief of declaration as prayed ?	Yes
3.	Whether plaintiff is entitled for relief of declaration as prayed ?	No
4.	Whether plaintiff is entitled for the relief of possession as prayed ?	No
5.	In the event of grant of possession whether plaintiff is entitled for mense profit ?	No
6.	What order & decree	The suit is dismissed.

4. The Plaintiff tendered his evidence affidavit in support of his Plaint at Exhibit – 33/C and he was cross-examined by the

Defendant. The Defendant tendered his evidence affidavit at Exhibit - 61 in support of written statement and he was cross-examined by the Plaintiff. The following documents are brought on record in the evidence by the parties.

Sr. Nos.	Documents	Exhibits
1.	Power of Attorney	<u>Exh. 49</u>
2.	Letter to Talathi by the plaintiff.	<u>Exh. 50</u>
3.	Mutation Entry No.11364	<u>Exh. 52</u>
4.	Reply notice through Adv. Nehri on behalf of plaintiff	<u>Exh. 53</u>
5.	Certified Copy of sale deed	<u>Exh. 56</u>
6.	Legal Notice by defendant	<u>Exh. 57</u>
7.	News paper publication published in Lokmat	<u>Exh. 58</u>
8.	Cheque No.312741	<u>Exh. 79</u>

5. After the parties led their evidence, the learned Trial Court on hearing the parties and appreciating the evidence on record passed the impugned Judgment and Order / Decree.

6. Heard learned Advocate for the Appellant/Plaintiff and the learned Advocate for the Respondent / Defendant.

7. It is submitted by the learned Advocate for the Plaintiff that he consciously executed the sale deed. The terms and conditions were clearly mentioned in the sale deed. One of the conditions in the sale deed was that the Defendant will not mutate his name in the revenue record, unless the entire payment was made, however, on the third day of the sale deed, the Defendant mutated his name. The Plaintiff had written to the revenue authority not to mutate the name of Defendant in the revenue record in view of the condition 'B' in the sale deed.

Since the Plaintiff was not aware of the mutation entry, he encashed the cheque dated 30/01/2016. After the Plaintiff came to know about the mutation of Defendant's name in the revenue record of the suit property, he did not tender the last cheque for encashment. The Defendant sent a notice to the Plaintiff as to why the cheque was not deposited with the Bank and enclosed the copy of Demand Draft of February - 2016. When the last cheque was not deposited with the Bank, there was no occasion for the Defendant to remove the DD and send the copy of the same to the Plaintiff. This show that there was no sufficient balance in the Defendant's account so as to honour the last cheque. Had the intention of the Defendant been clear, he would have sent the original DD to the Plaintiff. This show *mala fide* intention on the part of the Defendant and that he was not ready and willing to perform his part of contract.

8. He further submitted that there was no cross-examination of the Plaintiff by the Defendant on the point that the Plaintiff knew about the mutation entry prior to deposit of the first post-dated cheque. Incorporation of the terms and conditions in the sale deed was to secure the interest of the parties due to uncertainties in the market. The learned Civil Court made wrong observations in the Judgment and Order. The issue involved in the suit revolves around the provisions of Sections 19, 21 and 31 of the Transfer of Property Act, 1982 [hereinafter referred to as 'the T.P. Act']. The impugned Judgment and Order was unsustainable in the eye of law and the same be quashed and set aside. In support of his submissions, he relied upon the following Judgments : -

- [i] **Kaliaperumal Versus Rajagopal and Another,** (2009) 4 SCC 193
- [ii] **Muddasani Venkata Narsaiah (Dead) through Legal Representatives Versus Muddasani Sarojana,** (2016) 12 SCC 288
- [iii] **Sambhaji Laxmanrao Pawar Versus Abdul Wahed s/o Rahmatullah,** [1995(1) Mh.L.J. 22]
- [iv] **Bharat Aluminium Company v. Kaiser Aluminium Technical Services Inc.,** (2016) 4 SCC 126
- [v] **Janak Dulari Devi and another Versus Kapildeo Rai and Another,** (2011) 6 SCC 555

9. It is submitted by learned Advocate for the Defendant that there was no misrepresentation by the Defendant. The main contention of the Plaintiff was breach of condition incorporated in the sale deed by the Defendant. There is nothing to show that there was violation by the Defendant to make the payment. The sale deed was duly executed and as Form No. 4 was duly signed by the Plaintiff, the mutation entry was carried out after the sale deed. On execution of the sale deed, vested right got created in favour of the Defendant. It was the Plaintiff who did not deposit the cheque with the Bank and the reason for non deposit of cheque was nothing but an attempt to frustrate the transaction. The reason for making the application to the Talathi by the Plaintiff in January-2016 show that he knew about the mutation and the said step was nothing but an act to show ignorance about the mutation entry. Though the name of Defendant was mutated in the revenue record, the Plaintiff deposited/presented the cheque in the Bank, which was honoured.

10. He further submitted that on execution of the sale deed, all the rights got vested in the Defendant in respect of the suit property. The transaction was covered by the provisions of Section 54 of the T.P Act. As the Plaintiff did not present the last post-dated cheque given by the Defendant, there was no cause of action to file the suit. The act of Plaintiff is nothing but an 'U' turn to entangle the suit property in litigation. Since beginning, the intention of the Defendant was clear and on filing of the suit, the Defendant deposited Rs. 80.00 Lakhs in the Court. Mutation was not the essential condition for completing the sale. There are no pleadings as to when the Plaintiff came to know about the mutation entry and, therefore, the oral contention will not be acceptable. There was no merit in the Plaintiff's case and the suit was rightly dismissed. In support of his contention, he cited the following Judgment : -

[I] **Lakshmi Narain Barnwal alias Lakshmi Narayan, Appellant v. Jagdish Singh and another, Respondents, AIR 1991 PATNA 99**

11. Before advertng to the case in hand, the above referred Judgments are considered.

[a] In the case of Kaliaperumal Versus Rajagopal and Another [Supra], the question for consideration was whether title to the disputed properties passed to the Appellant therein, when the sale deed dated 26/06/1983 was registered on 26/10/1983, though admittedly no amount was paid towards consideration to the respondents. In that case, neither the possession of properties nor the title deeds were delivered to the purchaser either on the date of sale or thereafter and it was held that the parties intended that title of ownership to the suit properties would pass to the purchaser, only after payment of full

consideration by the purchaser to the vendor as a condition precedent and the parties did not intend that there should be transfer of ownership merely on execution and registration of the deed. It is further observed in Paragraph Nos.18 and 19 as follows:-

“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 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 Evidence Act. ”

[b] In the case of Muddasani Venkata Narsaiah (Dead) through Legal Representatives Versus Muddasani Sarojana [Supra], the Plaintiff filed Suit for possession of disputed property and mesne profit based on the title. The property was sold to the Plaintiff by registered sale deed dated 25/04/1981 and the possession was also delivered. Thereafter, on 12/06/1981 the Defendant forcibly evicted the Plaintiff from the property. It is further observed in Paragraph No.14 as follows:-

“14. It is settled law that denial for want of knowledge is no denial at all. The execution of the sale deed was not specifically denied in the written statement. Once the execution of the sale deed was not disputed it was not necessary to examine Buchamma to prove it. The provisions contained in Order 8 Rule 5 require pleadings to be answered specifically in written statement. This Court in Jaguri Sah & Ors. v. Dwarika Prasad

Jhunjhunwala AIR 1967 SC 109 has laid down that if a defendant has no knowledge of a fact pleaded by the plaintiff is not tantamount to a denial of existence of fact, not even an implied denial. Same decision has been followed by Madhya Pradesh High Court in Dhanbai v. State of M.P. & Ors. 1978 MPLJ 717. The High Court of Madhya Pradesh in Samrathmal & Anr. v. Union of India AIR 1959 MP 305 relying on PL.N.K.L. Chettyar Firm v. Ko Lu Doke AIR 1934 Rang 278 and Lakhmi Chand v. B. Ram Lal Kapoor Vakil AIR 1931 All. 423, had also opined that if the defendant did not know of a fact, denial of the knowledge of a particular fact is not a denial of the fact and has not even the effect of putting the fact in issue.”

[c] In the case of Sambhaji Laxmanrao Pawar Vs. Abdul Wahed s/o Rahmatullah [*Supra*], one of the point for consideration was whether the agreement dated November 28, 1981 was substituted by the second agreement dated March 30, 1982. In that matter, the challenge was to the decree for specific performance of agreement to sell in the suit filed by the vendee. It is observed in Paragraph No.9 that *the written statement must deal specifically with each allegation of fact in the plaint and when the defendant denies any such fact, he must not do so evasively but answer the point of substance. If his denial of a fact is not specific but evasive, the said fact shall be taken to be admitted. In such an event, the admission itself being proof, no other proof is necessary.* It is observed that a reading of the document dated March 30, 1982 in unequivocal terms, it suggests that it was not executed in substitution of the earlier agreement. It is observed that the vendor failed to rebut the presumption and in fact no such foundation was laid in the written statement or any proof at the trial, the vendee was throughout willing to perform his part of the contract and in fact, agreed for the additional price demanded by the vendor to avoid breach of the agreement and the Appeal was dismissed.

[d] In the case of Bharat Aluminium Company Vs. Kaiser Aluminium Technical Services Inc. [*Supra*], the question for consideration was whether the parties by agreement, express or implied, have excluded wholly or partly, Part - I of the Arbitration Act. While dealing with the relevant clauses of the arbitration agreement therein, it was observed in Paragraph No.9 that, *one should not strain too much to interpret an agreement between two parties as in the case of a statutory interpretation. The approach in analysing the terms of agreement should be straight and plain but at the same time cohesive and logical.* It is observed in Paragraph Nos.10 and 11 as follows :-

“10. In the matter of interpretation, the court has to make different approaches depending upon the instrument falling for interpretation. Legislative drafting is made by experts and is subjected to scrutiny at different stages before it takes final shape of an Act, Rule or Regulation. There is another category of drafting by lawmen or document writers who are professionally qualified and experienced in the field like drafting deeds, treaties, settlements in court, etc. And then there is the third category of documents made by laymen who have no knowledge of law or expertise in the field. The legal quality or perfection of the document is comparatively low in the third category, high in second and higher in first. No doubt, in the process of interpretation in the first category, the courts do make an attempt to gather the purpose of the legislation, its context and text. In the second category also, the text as well as the purpose is certainly important, and in the third category of documents like wills, it is simply intention alone of the executor that is relevant. In the case before us, being a contract executed between the two parties, the court cannot adopt an approach for interpreting a statute. The terms of the contract will have to be understood in the way the parties wanted and intended them to be. In that context, particularly in agreements of arbitration, where party autonomy is the grundnorm, how the parties worked out the agreement, is one of the indicators to decipher the intention, apart from the plain or grammatical meaning of the expressions and the use of the expressions at the proper places in the agreement.

11. Contextually, it may be noted that in the present case, the

respondent had invoked the provisions of English law for the purpose of the initiation of the unsettled disputes. It has hence, while interpreting an agreement, to be kept in mind that the parties, intended to avoid impracticable and inconvenient processes and procedures in working out the agreement. Potter J. made a similar observation in Cargill International S.A. v. Bangladesh Sugar and Food Industries Corpn. (1998) 2 ALL ER 406 (CA) :

“As Saville, J. observed in another context in Palm Shipping Inc. v. Kuwait Petroleum Corpn. (1988) 1 Lloyd’s Rep 500 :

‘... It is not a permissible method of construction to propound a general or generally accepted principal ... and then ... to seek to force the provisions of the (contract) into the straightjacket of that principle...’

On the other hand, modern principles of construction require the court to have regard to the commercial background, the context of the contract and the circumstances of the parties and to consider whether, against that background and in that context, to give the words a particular or restricted meaning would lead to an apparently unreasonable and unfair result.”

[e] In the case of Janak Dulari Devi and Another Vs. Kapildeo Rai and Another [Supra], the suit was for specific performance. While dealing with one of the questions posed for consideration, it is observed that *where the intention of the parties is that passing of title would depend upon the passing of consideration, evidence is admissible for the purpose of contradicting the recital in the deed acknowledging the receipt of consideration. Considering the previous Judgment of the Hon’ble Supreme Court of India, it is further observed that where the sale deed recites that on receipt of the total consideration by the vendor, the property was conveyed and possession was delivered, the clear intention is that title would pass and possession would be delivered only on payment of the entire sale consideration. Therefore, where the sale deed recited that on receipt of the entire consideration, the vendor was conveying the property, but the purchaser admits that he has not paid the entire*

consideration [or if the vendor proves that the entire sale consideration was not paid to him], title in the property would not pass to the purchaser.

There is further reference to the previous Judgment of Patna High Court, wherein, it is observed that *it is essentially a matter of intention of the parties which has to be gathered from the document itself but if the document is ambiguous then from the attending circumstances, subject to the provisions of Section 92 of the Evidence Act and in construing a document due weight should be given to all the recitals and the subsequent recitals as regards payment of consideration at the time of exchange of equivalents and putting the vendee into possession should also be given equal weight. In that case, it was observed that on execution of registration of sale deed dated 22/02/1988 in favour of the Appellants, title did not pass to the purchaser and possession was not delivered.*

[f] In the case of Lakshmi Narain Barnwal alias Lakshmi Narayan, v. Jagdish Singh and Another [Supra], the suit was for declaration of title and recovery of possession. It is observed in Paragraph No.32 that, *the question as to whether, upon execution of the deed of sale, title passes to the vendee or not, depends upon the intention of the parties. In terms of Section 54 read with Section 8 of the Transfer of Property Act, ordinarily the title of the vendor passes to the vendee on registration of the deed of sale irrespective of the fact as to whether the consideration money either in whole or in part has been paid by the vendee to the vendor or not, subject of course a contrary intention of the parties to the said transaction.*

It is further observed in Paragraph No.37 that, a

registered deed of sale carries with it a sanctity of a genuine transaction and in this view of the matter the burden of proof was heavy upon the plaintiff to show that despite the execution and registration of the said deed of sale, no title passed on to Ganesh Singh as he did not pay the consideration amount to Sri Laddu Lal, in view of the intention of the parties that unless consideration amount is paid, no title will pass on to the vendee.

12. After hearing both the sides and scrutinizing the evidence available on record, following are the aspects, on which, both the sides are on one page :-

- [i] The Plaintiff sold the suit property to the Defendant vide registered sale deed bearing Nos.8126/2015 [Exhibit – 77] dated 21/12/2015.
- [ii] Till the date of execution of sale deed, the Defendant paid Rs.80,00,000/- [Rupees Eight Lakhs Only] to the Plaintiff.
- [iii] At the time of execution of sale deed, Defendant issued two post-dated cheques amounting to Rs.80,00,000/- [Eighty Lakhs Only] and Rs.85,00,000/- [Eighty Five Lakhs Only] bearing dated 30/01/2016 and 02/03/2016, respectively towards balance consideration.
- [iv] On execution of sale deed, the Plaintiff handed over the possession of suit property to the Defendant.
- [v] The cheque dated 30/01/2016 was encashed by the Plaintiff.
- [vi] The Defendant got his name mutated in the records of the suit property on 23/12/2015 which came to be approved on 14/01/2016 [Exhibit – 52].
- [vii] The Plaintiff did not deposit the second cheque dated 02/03/2016 for encashment.

13. Following points arise for our determination :-

- [1] Whether the Plaintiff established that the sale of suit property i.e. sale deed dated 21/12/2015 was voidable at his option for breach of condition by the Defendant ?
- [2] Whether impugned Judgment and Order requires interference ?
- [3] What Order ?

As to Point Nos.1 to 3 :-

14. The Plaintiff sought the Decree on two [2] grounds ;

[1] Mutation by the Defendant before realization of all the post-dated cheques and [2] Creating third party interest by the Defendant in the suit property before realization of all post-dated cheques. The controversy between the parties revolve around the above referred sale deed. It would be profitable to reproduce the relevant extracts from the above referred sale deed.

“The vendor and the purchaser have mutually decided to execute sale deed of said agricultural land admeasuring 4 Hector, which more particularly described in Para A here-in-above for total consideration of Rs.2,45,00,000/- [Rupees Two Crores Fourty Five Lacs Only].

NOW THIS INDENTURE OF SALE WITNESSES AS FOLLOWS :-
In consideration of Rs.2,45,00,000/- [Rupees Two Crores Fourty Five Lacs Only], is paid by the purchaser, by Account Payee Cheques, to the vendor detailed as under :

<i>Sr. No.</i>	<i>Date</i>	<i>Cheque No.</i>	<i>Amount</i>
<i>1</i>	<i>08.09.2015</i>	<i>162838</i>	<i>Rs.30,00,000/-</i>
<i>2</i>	<i>10.09.2015</i>	<i>162841</i>	<i>Rs.30,00,000/-</i>
<i>3</i>	<i>12.10.2015</i>	<i>312735</i>	<i>Rs.20,00,000/-</i>
<i>4</i>	<i>30.01.2016</i>	<i>312740</i>	<i>Rs.80,00,000/-</i>
<i>5</i>	<i>02.03.2016</i>	<i>312741</i>	<i>Rs.85,00,000/-</i>
<i>TOTAL AMOUNT</i>			<i>Rs.2,45,00,000/-</i>

In view of this Sale Deed, the purchaser will become absolute owner and possessor of the said land

Purchaser shall be entitled to enjoy the Said Land as per his choice and wish. The Purchaser can mutate his name in the revenue and other records, only after the realisation of all the Post Dated cheques and the Vendor have no objection and shall extend full co-operation for the same.

*That to Honour all the Post Dated cheques due date is the Essence of the above "**SALE DEED**". The vendee/Purchaser has to strictly adhere & follow the same. In any case, Both the Post Dated Cheques for entire balance payable Amount of Rs.1,65,00,000/- (Rs.One Crore & Sixty Five Lacs only) are to be Hounoured & paid by the Vendee/Purchaser, to the Vendor / Seller on its Due Date, i.e. Cheque No.312740 of Rs.80,00,000/- on 30-01-2016 and another Cheque No.312741 of Rs.85,00,000/- on 02-03-2016 and the Purchaser is not Authorised to execute any Sale Deeds of land or Plots with any Third Party before the realisation of these Post Dated Cheques. In case of any Default & Failure of the Same, the above said **SALE DEED**, will be automatically treated as Cancelled and the Entire amount paid by the Purchaser / Vendee will be forfeited, without any notice and the Purchaser / Vendee will not have any Right / Claim over the same as well as he will not at all, be empowered & will not have any Right to Claim for any Refund of the same, nor he can claim any Right over the Property under sale, nor he will be Empowered and Authorized, to file any suit against the Seller / Vendee".*

15. Sale is defined under Section 54 of the T.P. Act, which reads 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."

16. The Plaintiff in his cross-examination admitted that, prior to the documentation, Defendant made payment of Rs.80,00,000/- [Rupees Eighty Lakhs] to him. He further admitted that on the date of execution of sale deed, he delivered the possession of suit property in favour of the Defendant and had transferred all the rights of suit property in favour of the Defendant. There is no dispute on the aspect that, the

Defendant had paid part amount towards consideration to the Plaintiff and for remaining amount of consideration had issued two post-dated cheques in favour of the Plaintiff. Thus, it is more than clear that the transaction between the parties was covered by the definition of Sale. From the evidence on record and the contents of sale deed which is not disputed, it becomes more than clear that the intention of the parties was to transfer the suit property by way of sale from Plaintiff to Defendant. On execution of the sale deed, the ownership and title passed on to the Defendant. The suit property was conveyed to the Defendant by the sale deed. There is no ambiguity in the sale deed. The transaction has the trappings of Sections 54 and 8 of the T.P. Act. Sections 19, 21 and 31 of the T.P. Act pertains to Vested Interest, Contingent Interest and Condition that transfer shall cease to have effect in case specified uncertain event happens or does not happen. A vested interest was created forthwith in the Defendant on execution of sale deed. The transaction do not fall in the category of Contingent Interest and Conditional Transfer. Thus, the Plaintiff will only be entitled for the remaining unpaid amount of consideration by virtue of the provision of Section 55 [4] of the T.P. Act.

17. On Mutation by the Defendant before realization of all the post-dated cheques; the Plaintiff came with the case that though there was stipulation in the sale deed not to mutate the name of Plaintiff in the revenue records before realization of all the post-dated cheques, mutation was effected. It has come in the cross-examination of Plaintiff that he frequently used to enter into the transaction for landed property and knew the purpose of Form No.4 and at the time of execution of sale deed, he had executed Form No.4. He admitted that after handing over the

Form No.4, revenue authority used to take the entry of mutation in the name of vendee. He further agreed that despite the condition in sale deed, he executed Form No.4. The cross-examination of Defendant show that after fifteen days, his name was mutated in the revenue records and for that he moved the application on 23/12/2015. It is the case of Plaintiff that on 01/01/2016, he gave the application to the Talathi requesting not to mutate the name of Defendant. According to the Plaintiff, he learnt on 05/02/2016, that the Defendant had mutated his name in the revenue record. It is not clarified by the Plaintiff, by way of pleadings and evidence as to in what manner or under what circumstance, he got the knowledge of the mutation entry on 05/02/2016. There is gray area on this aspect. What is gathered from the evidence on record is that, the Plaintiff got the knowledge that the Defendant had moved application for mutation and so he submitted the application dated 01/01/2016 to the Talathi requesting not to mutate the name of the Defendant.

18. Admittedly, the Plaintiff encashed the first post-dated cheque dated 31/01/2016 issued by the Defendant. Even though, for the sake of argument, the Plaintiff's version that he got the knowledge on 05/02/2016 that the Defendant mutated his name is accepted, nothing was done by him and he kept mum. Only for the first time, he raised this in the Plaint about the knowledge on 05/02/2016. Thus, the Plaintiff's version that only after encashing the first post-dated cheque, he learnt about the mutation does not appear to be probable and acceptable. It is needless to state that the revenue entries and records are for the fiscal purpose. The learned Civil Court has rightly observed that, mutation of Defendant's name in revenue record was not a

breach of material condition of the sale deed and condition of mutation was not the essence of contract.

19. The other contention of the Plaintiff is that the Defendant was not authorized to execute any sale deed of suit land with any third party before realization of the post-dated cheques. On this aspect, it is nowhere the case of Plaintiff in the Plaint that the Defendant had plotted the suit land and created third party interest. What was pleaded is that, the Defendant was trying to change the nature of the suit property and was trying to create third party interest. On this aspect, the Plaintiff is heavily relying upon the admission given by the Defendant in the cross-examination that he plotted some of the suit property and sold some of the plots. It is settled position under the law that admission is only the piece of evidence and can be explained and it does not conclusively bind a party unless it amounts to an estoppel. The sale deed was executed on 21/12/2015. The cross-examination of the Defendant was done on 12/04/2018. It is not brought on record as to when the suit property was plotted and sold out. Therefore, the said admission by the Defendant will not be of any assistance to the Plaintiff as there is no iota of evidence to show as to when the suit property was plotted and third party interest was created. Moreover, there is complete absence of foundational pleadings by the Plaintiff in the Plaint in that regard.

20. What is seen from the evidence on record, is that before the due date of the second post-dated cheque, the Defendant sent the copy of demand draft of remaining consideration on 06/02/2016 to the Plaintiff, which was refused by the Plaintiff. True it is that, the original demand draft was not sent. However,

it is a matter of record that only after the Defendant issued the legal notice dated 19/04/2016 through Advocate in respect of depositing second post-dated cheque in the Bank, the Plaintiff by notice dated 28/04/2016 came up with the case of cancellation of sale deed on the ground of mutation. It is evident that substantial amount of consideration was paid by the Defendant to the Plaintiff and also issued post-dated cheques which show his bonafides. Admittedly, the Plaintiff did not put the last post-dated cheque i.e. dated 02/03/2016, issued by the Defendant for encashment. Had it been the case that the Plaintiff deposited the said cheque and there was no realization of the cheque amount, it would have been different case. However, it is not so. On this ground also, the case of Plaintiff fails.

21. We have scrutinized the impugned Judgment and Order of the learned Civil Court. The learned Civil Court has rightly framed the issues. The learned Trial Court has considered the oral as well as documentary evidence available on record and on appreciation of the same recorded its findings against the issues. The findings are supported with cogent reasons which are derived from the pleadings and evidence on record. Even, in the light of the principles laid down in the above referred Judgments relied by the parties, the Plaintiff is not entitled for the reliefs claimed in the Suit. No case exists to interfere in the impugned Judgment and Order. We uphold the Judgment and Order and proceed to pass the following order :

ORDER

[I] First Appeal is dismissed.

[II] The amount of balance consideration deposited by the Defendant in the Court, be paid to the Plaintiff, with interest accrued thereon, on his Application.

[NEERAJ P. DHOTE, J.]

[R. G. AVACHAT, J.]

Sameer