



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL REVISION APPLICATION (CRA) NO.127 OF 2023

Smt. Neeta W/o. Amrut Chawdagor and other
.Vs.

M/s. Om Satyam Buildcon Pvt. Ltd., Nagpur and ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions Court's or Judge's orders.
and Registrar's Orders.

Ms Garima Jain, Advocate for the applicants
None for the respondents

CORAM : G.A. SANAP J.

DATE :SEPTEMBER 20, 2024

Heard finally at the admission stage. The advocate for respondent No.1 is absent.

2. In this revision application, the challenge is to the order dated 18.10.2023 passed by the learned 6th Joint Civil Judge Senior Division, Nagpur, whereby the learned Judge has rejected the application made under Order VII Rule 11 of the Code of Civil Procedure, 1908 (for short 'the CPC'), for rejection of the plaint. Respondent No.1 is the original plaintiff. The applicants are the original defendant Nos. 1 and 2. Respondent Nos. 2 and 3 are the subsequent purchasers of the suit flat. In this order, the parties would be referred by their nomenclature in the plaint.

3. The plaintiff has filed the suit seeking a declaration that the sale deed of the suit flat dated 01.09.2014 in favour of defendant Nos. 1 and 2 is null and void. Similarly, the declaration has been sought that the subsequent sale deed by defendant Nos. 1 and 2 in favour of defendant Nos. 3 and 4 dated 31.03.2022 is not binding on the plaintiff and as such, null and void. The plaintiff is a company dealing in construction business. Defendant Nos. 1 and 2 purchased the suit flat from the plaintiff vide registered sale deed dated 01.09.2014 for a total consideration of Rs.33,00,000/-. According to the plaintiff, defendant Nos.1 and 2 had agreed to pay the balance sale consideration of Rs. 8,34,970/- in due course. The plaintiff had faith in defendant Nos.1 and 2. The plaintiff granted them some time to pay the balance consideration. However, defendant Nos.1 and 2 did not pay the balance consideration. The sale deed, according to the plaintiff, was conditional subject to payment of the balance consideration. It is stated that defendant Nos.1 and 2 behind the back of the plaintiff and without obtaining the consent of the plaintiff sold the suit flat to defendant Nos.2 & 3 by an agreement dated 26.04.2022. It is stated that after execution of this agreement, the plaintiff came to know about this. Plaintiff issued legal

notice to defendant Nos.1 and 2. It is stated that the sale deed is null and void *inasmuch* as the entire consideration was not paid.

4. Defendant Nos. 1 and 2 filed the written statement and opposed the suit. It is their contention that this suit is false and frivolous. The sale deed had been executed in their favour on payment of entire purchase price. The sale deed dated 01.09.2014 clearly shows the agreed purchase price, the payment of the entire consideration and the transfer of an absolute ownership to defendant Nos. 1 and 2 on execution of the sale deed. Defendant Nos.1 and 2 contended, in their application filed under Order VII Rule 11 of the CPC, that the suit was barred by limitation. There was no cause of action for filing the suit in the year 2022. On these averments and more particularly relying upon the terms and conditions of the sale deed, they prayed for rejection of the plaint.

5. Learned Judge, on the basis of the averments made in the plaint, has observed that the issue of the fact in the backdrop of the averments made in the plaint are required to be adjudicated upon. The question of limitation, in the opinion of the learned Judge, could not be said to be, in the fact situation, a pure question of law.

The Court has to read the plaint as a whole to opine whether the plaint discloses a cause of action or not. Learned Judge has accordingly rejected the application. Defendant Nos.1 and 2 have assailed this order passed by the learned Judge by way of this revision.

6. I have heard Ms Garima Jain, learned Advocate for defendant Nos. 1 and 2. Perused the record and proceedings.

7. Learned Advocate submitted that from the date of the execution of the sale deed, the suit filed after nine years was hopelessly barred by limitation. Learned Advocate took me through the sale deed, which has also been admitted by the plaintiff, to buttress her submission that the sale deed is silent about the balance or part consideration to be paid by defendant Nos.1 and 2 in future. Learned Advocate submitted that by the sale deed, the property was transferred to defendant Nos.1 and 2. They became the absolute owners of the property. Learned Advocate submitted that it is not the case of the plaintiff that the payment, which was made by cheque, was not received by the plaintiff. Learned Advocate submitted that even if it is assumed for the sake of argument that the balance consideration has to be

received by the plaintiff, then the remedy available is to file a suit for recovery of the balance consideration and not for cancellation of the registered sale deed in the teeth of the terms and conditions of the sale deed. In order to seek support to her submission, the learned Advocate has placed heavy reliance on the decision of the Apex Court in the case of *Dahiben .v/s. Arvindbhai Kalyanji Bhanusali (Gajra) dead through Legal Representatives and others*¹.

8. Learned Advocate for the plaintiff is absent today. Before proceeding to appreciate the facts stated in the plaint, it would be appropriate to consider the law laid down by the Apex Court in the decision supra. Para Nos. 29.8 and 29.9 are relevant for addressing the issue in this case. The same are extracted below:

“29.8 In Vidhyadhar v. Manikrao! this Court held that the words "price paid or promised or part-paid and part-promised" indicates that actual payment of the whole of the price at the time of the execution of the sale deed is not a sine qua non for completion of the sale. Even if the whole of the price is not paid, but the document is executed, and thereafter registered, the sale would be complete, and the title would pass on to the transferee under the transaction. 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 could not be

¹ (2020) 7 SCC 366

invalidated on this ground. In order to constitute a "sale", the parties must intend to transfer the ownership of the property, on the agreement to pay the price either in presenti, or in future. The intention is to be gathered from the recitals of the sale deed, the conduct of the parties, and the evidence on record.

29.9. In view of the law laid down by this Court, even if the averments of the plaintiffs are taken to be true, that the entire sale consideration had not in fact been paid, it could not be a ground for cancellation of the sale deed. The plaintiffs may have other remedies in law for recovery of the balance consideration, but could not be granted the relief of cancellation of the registered sale deed. We find that the suit filed by the plaintiffs is vexatious, meritless, and does not disclose a right to sue. The plaint is liable to be rejected under Order 7 Rule 11 (a)."

9. Perusal of the law laid down in this case would show that in similar facts, the Apex Court has held that non-payment of part of the sale price would not effect the validity of the sale deed, once the title in the property has already passed. Even if the balance sale consideration is not paid, the sale could not be invalidated on this ground. It is further observed that the plaintiff may have other remedies in law for recovery of balance consideration but he could not be granted relief of cancellation of the registered sale deed.

10. The plaintiffs have admitted the execution of the sale deed dated 01.09.2014. Perusal of the sale deed, which is the basis of the suit, would show that para No. 1.2 provides for the manner of payment of the consideration amount. The total consideration is Rs.33,00,000/-. There is no grievance on the part of the plaintiff that the consideration of Rs.33,00,000/- was not received. Clause No. 1.3 of the sale deed provides for the absolute transfer of the right, title and interest in the property in favor of defendant Nos. 1 and 2, subject to the realization of the cheques and full and final consideration amount. Perusal of the entire sale deed would show that it nowhere stipulates that over and above the total consideration of Rs.33,00,000/-, defendant Nos. 1 and 2 would be liable to pay any amount. It nowhere stipulates either the balance consideration or the date and time of the payment of the balance consideration. It is seen on perusal of the plaint that the amount sought to be recovered, according to the plaintiff, is a part of consideration. It is not supported by the sale deed. The right, title and interest of the suit flat was transferred to defendant Nos. 1 and 2.

11. Defendant Nos. 1 and 2 agreed to sale the suit flat to defendant Nos. 3 and 4 in the year 2022. The

plaintiff did not take any action for nine years against the defendants. The plaintiff company is dealing in construction business. There is no correspondence between the parties with regard to any balance consideration or the demand of balance consideration. Plaintiff issued the legal notice after execution of the agreement to sell by defendant Nos. 1 and 2 in favour of defendant Nos. 3 and 4. The sale deed, which is the basis of the claim, cannot be kept out of consideration while deciding the issue of limitation. This sale deed has to be treated as part of the plaint. Perusal of the plaint would show that it is nothing but a skillful drafting of the advocate. For nine years, the sale deed was not challenged on any ground. Perusal of the plaint in *juxtaposition* with the sale deed would show that the suit filed by the plaintiff company is vexatious, meritless and does not disclose the right to sue. The suit filed after nine years seeking a declaration that the sale deed executed on 01.09.2014 is null and void is hopelessly barred by limitation. Learned Judge has failed to consider the sale deed in its entirety and has come to the wrong conclusion. The plaintiff did not initiate any action for nine years for recovery of the balance consideration, if any, from defendant Nos. 1 and 2. This conduct reflects on the

nature of the claim. The claim, which is barred by limitation, cannot be prosecuted in this manner. Therefore, I conclude that the learned Judge rejected the application without considering the sale deed and the plaint as a whole. As such, order deserves to be set aside. Hence, I pass the following order:

ORDER

- (1) The civil revision application is allowed.
- (2) The order dated 18.10.2023 passed by the learned 6th Joint Civil Judge Senior Division, Nagpur is accordingly set aside.
- (3) The application (Exh. 17) made by defendant Nos. 1 and 2 in Special Civil Suit No. 703 of 2022 is allowed.
- (4) The plaint is rejected.
- (5) The decree be drawn up accordingly.

(G. A. SANAP, J)