



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

SECOND APPEAL NO. 455 OF 2022

APPELLANT :

(Original Plaintiff)

Sau Nandatai Vasantrao Deoghare,
Aged about 55 years,
Occ. Household,
R/o Near State Bank of India, Warud,
Tq. Warud, District Amravati.

V E R S U S

RESPONDENT :

(Original defendant nos.1)
to 3 respectively)

1. Rahul Vitthalrao Mankar,
Aged about 37 years, Occupation -
Service as Assistant Professor,
Medicine Department, C/o
Dr.Panjabrao Deshmukh Medical
College, Amravati.
2. Amol Vitthalrao Mankar,
Aged about 35 years, occ. Medical
Practitioner, Mankar Hospital,
Javahar Nagar, Near Mouli Medical
Store, Amravati 444 604.
3. Vitthal Fakirji Mankar,
Aged about 70 years,
Occ. Agriculturist, C/o Mankar Hospital
Javahar Nagar, Near Mouli Medical
Store, Amravati 444 604.

Mrs. R. D. Raskar, Advocate for appellant.

Mrs. S. W. Deshpande, Advocate for respondent Nos.1 to 3.

CORAM: ROHIT W. JOSHI, J.

DATED : 22/04/2025.

ORAL JUDGMENT :

1. This appeal is preferred by the original plaintiff who has filed suit for cancellation of sale deed dated 17/11/2006 executed by her in favour of defendant No.3 on the ground that the same is obtained by fraud and also without consideration. The said suit came to be registered as Regular Civil Suit No.29/2012.

2. The learned Trial Court has dismissed the suit vide Judgment and Decree dated 11/03/2020. Aggrieved by dismissal of the suit, the plaintiff preferred First Appeal bearing Regular Civil Appeal No.69/2020 which was also dismissed vide Judgment and Decree dated 08/07/2022. Aggrieved by the concurrent Judgments, the present appeal is preferred by the original plaintiff. The contention of the learned advocate for the appellant / plaintiff is that the sale transaction is void for want of consideration. The learned advocate has raised a contention that total sale consideration is Rs.11,39,760/-, out of which sum of Rs.4,00,000/- is stated to be paid by the defendant No.3 - purchaser to the plaintiff by execution of agreement of sale dated 20/02/2006. She however, contends that the said amount of Rs.4,00,000/- which is mentioned in the agreement of sale dated 20/02/2006 is also not paid. In view of the aforesaid, contention is raised that since the sale transaction is without payment of any consideration, the sale deed is void ab initio and deserves to be cancelled as such. The learned advocate contends that the defendant No.3 - purchaser has failed to establish payment of any consideration either in terms of sale deed dated 17/11/2006 or under the agreement dated 20/02/2006 which preceded execution of sale deed. She has placed reliance on the Judgment of Hon'ble Supreme Court in the matter of Kewal Krishan Vrs. Rajesh Kumar and others, reported in AIR 2022 SC 564 particularly Paragraph No.16 thereof in support of her contention.

3. Per contra, learned advocate for the respondents supports the findings recorded by the learned Courts. She makes a reference to Section 54 of Transfer of Property Act, 1882 to contend that payment of entire sale consideration is not essential to complete the sale transaction and the sale transaction is completed immediately upon execution and registration of sale deed, as contemplated under the said provision. She further contends that sale deed may be executed by vendor in favour of purchaser for sale consideration paid or promised or partly paid and partly promised. She canvasses that even in case of failure to make payment of entire sale consideration, a completed sale transaction cannot be set at naught and at best the vendor will be entitled to recover the balance sale consideration and will have a charge over the demised property for unpaid sale consideration. She contends that entire sale consideration is paid by the defendant No.3 - purchaser to the plaintiff.

4. The learned counsel for the respondents places reliance on the Judgment of the Hon'ble Supreme Court in the matter of Dahiben Vrs. Arvinbhai Kalyanji Bhanusali (Gajra) dead through legal representatives and others, reported in (2020) 7 SCC 366.

5. With the able assistance of the learned advocates, I have perused the findings recorded by both the Courts. I have also perused the plaint, written statement and depositions of the plaintiff and respondent No.3. The learned Trial Court has referred to statement of

plaintiff in her cross-examination where she admits that she had confirmed the receipt of sale consideration before the Registrar at the time of execution of sale deed. While disputing the receipt of entire sale consideration, the plaintiff has stated in her deposition that she has to receive the balance sale consideration from the defendant Nos.1 to 3. She has thereafter admitted that she has not issued any communication to defendant Nos.1 to 3 with respect to payment of balance sale consideration. However, she has promptly qualified the statement by stating that the defendant No.3 had issued cheque in her favour in lieu of payment of amount payable by him to her. This cheque admittedly is for a sum of Rs.7,64,000/- whereas the total sale consideration is Rs.11,39,760/-. In view of the aforesaid, it appears from the deposition of the plaintiff that the grievance of the plaintiff was with respect to payment of amount enumerated in cheque which is admittedly not the entire sale consideration. The position that emerges from perusal of cross-examination is that she had received some part of consideration although according to her, entire sale consideration is not paid.

6. It is now well settled law that by catena of Judgments of Hon'ble Supreme Court including the Judgment in the matter of **Dahiben** (supra) which is relied upon by the learned counsel for the respondents that failure to make entire payment of sale consideration does not render the sale deed bad. The sale transaction is completed at the moment the sale deed executed by vendor in favour of purchaser is

registered. The transaction cannot be revoked merely on account of failure on the part of sale consideration.

7. It will be pertinent to mention that the burden of proving the fact that the entire sale consideration was not received was on the plaintiff. The learned advocate for the respondents has drawn my attention to the order dated 11/03/2020 passed by the learned Trial Court directing the plaintiff to face further cross-examination. Undisputedly, the plaintiff did not comply with the said order passed by the learned Trial Court. This is the reason for drawing an adverse inference against the plaintiff in holding that she has failed to discharge the burden of proving that the sale transaction is without consideration.

8. In that view of the matter, in my considered opinion, no substantial question of law arises in the present appeal.

9. The second appeal stands dismissed with no order as to costs.

10. The civil applications, pending if any, are disposed of accordingly.

[ROHIT W. JOSHI, J.]