IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Sugato Majumdar

SA/127/2015

Kartick Pal @ Kartick Chandra Pal

VS

Kakoli Pal & Ors

For the Appellant	:	Mr. Amitava Mukherjee, Sr. Adv. Ms. Arpita Saha, Adv. Ms. Ankita Ghosh, Adv.
For the Respondents	:	Mr. Haradhan Mondal, Adv.
Heard on	:	05.02.2026
Judgment on	**:**	**12.02.2026**

Sugato Majumdar, J :

The instant appeal is preferred against the appellate judgment and decree dated 17/07/2014 passed by the Learned Additional District Jude, Bolpur Birbhum in Title Appeal No. 6 of 2013.

The Plaint case may be summarized at the onset.

a) The Respondent/Plaintiff No. 1 is daughter of one Ashok Kumar Pal, since deceased. The pro-forma Defendant No. 1 is the mother of the Respondent/Plaintiff and the pro-forma Defendant No. 2 is the sister of the Respondent/Plaintiff. The pro-forma Defendant No. 1 was the widow of late Ashok Kumar Pal.

b) The said Ashok Kumar Pal, since deceased, used to reside with his wife in his nativity at Kirnahar. The mother of the Respondent/Plaintiff, being the proforma Defendant No.1 was neither physically nor mentally fit and she was not capable of understanding her own benefits.

c) The said Ashok Kumar Pal breathed his last on 26/08/2010 leaving behind him the Respondent/Plaintiff and the pro-forma Defendants as the legal heirs and successors. After observing rituals, the Respondent/Plaintiff as well as the pro-forma Defendant No. 2 returned their own matrimonial homes before which the Appellant/Defendant No. 1 assured them that he would take care of their mother, the pro-forma Defendant No. 1.

d) After demise of the said Ashok Kumar Pal, since deceased, the Respondent/Plaintiff and the pro-forma Defendant No.2 thought for partitioning the inherited properties and requested the Appellant/Defendant No. 1 to take necessary arrangements for this. But he avoided to do the same. Later on the Respondent/Plaintiff came to know that the Appellant/Defendant No. 1 purchased the "kha" schedule property in terms of a deed which was described in "ka" schedule of the plaint.

e) The Respondent/Plaintiff obtained certified copy of the deed and became aware of the fraud perpetrated on her father, late Ashok Kumar Pal, who conveyed the suit property in terms of the deed mentioned in "ka" schedule to the Appellate/Defendant No.1.

f) It was pleaded in the plaint that the said Ashok Kumar Pal, since deceased, had been suffering from cardiac ailments and diabetes since long and had almost lost his vision. He was taken to various places for treatment. It was further pleaded that the deed had not been executed voluntarily and no consideration had ever been paid.

g) The Respondent/Plaintiff, therefore, instituted the suit praying for declaratory decree, cancellation of instrument, permanent injunction as well as recovery of possession along with other relief and reliefs.

The Appellate/Defendant No. 1 contested the suit by filing written statement denying all the material allegations. Sum and substance of the written statement may be summarized as follow:

1. The Appellate/Defendant No. 1 was an employee of the shop ran by late Ashok Kumar Pal, since childhood and he was accepted as a family member. To meet the expenses of treatments the said Ashok Kumar Pal had taken loan from various persons. To repay the loan, the said Ashok Kumar Pal offered the Appellate/Defendant No. 1 to sell the suit property and the later agreed to such proposal.

2. The Appellate/Defendant No. 1 averred that the deed in question was prepared under instruction of the said Ashok Kumar Pal. On execution, possession was handed over and the name of the Appellate/Defendant No. 1 was entered into the record of rights.

3. It was the plea of the Appellate/Defendant No. 1 that the deed in question had been executed voluntarily and was duly registered, hence binding.

The pro-forma Defendant No. 3 filed a separate written statement wherein it was averred that the deed in question had been executed by her father late Ashok Kumar Pal voluntarily, hence legal and valid.

On the basis of rival pleadings, the following issues were framed by the Trial Court:-

1. Is the suit maintainable in its present form and prayer?
2. Whether the instant suit is barred by the provisions of Section 34 of the Specific Relief Act, 1963?
3. Is the suit barred by the principles of estoppel, waiver and acquiescence?
4. Is the impugned deed of sale as described in schedule "*kha*" is legal and valid?
5. Is the Plaintiff entitled to get the reliefs as prayed for?
6. What other relief or reliefs, if any, is the Plaintiff entitled to?

The Learned Trial Court decided the Issue No. 1, 2 & 3 in favour of the Respondent No. 1/Plaintiff but decided finally the Issue No. 4, 5 & 6 against the Respondent No. 1/Plaintiff and dismissed the suit on contest, in terms of the judgment and decree dated 27/05/2013.

The Respondent No.1/Plaintiff preferred appeal against the judgment and decree of the Trial Court dated 27/05/2013.

The First Appellate Court, in terms of the impugned judgment and decree dated 17/07/2014 set aside the judgment and decree passed by the Trial Court and passed declaratory decree, permanent injunction restraining the Appellant herein from alienating the suit property and also from disturbing possession of the Respondent No. 1/Plaintiff.

On being aggrieved and dissatisfied with the judgment and decree passed by the Appellate Court, the instant second appeal was preferred.

The Divisioon Bench, at the time of admission of the instant appeal framed the following substantial questions of law:

1. Whether the Learned Court below failed to appreciate the provisions of Section 54 of the Transfer of Property Act, 1882 in its proper perspective in as much as payment of the entire consideration at the time of execution of the deed of conveyance is not a condition precedent for completion of sale and if the balance consideration is paid prior to on or even after execution of the deed the same shall constitute a valid sale?
2. Whether the Learned Court below had wrongly interpreted the ratio of the judgment reported in **[(2011) 6 SCC page 555] Janak Dulari Devi & Anr. Vs. Kapildeo Rai & Anr.** and arrived at an absolutely wrong conclusion in total contradiction of evidence and pleadings?

Answers to the substantial questions of law so framed, demand consideration of the Section 54 of the Transfer of Property Act, 1888:

> "**54.** 'Sale' is a transfer of ownership in exchange for a price paid or promised or part paid and part-promised."

Definition of sale incorporates the concept of deferred payment of consideration or part payment of consideration money. Provision does not make a deed of sale null and void where part of consideration money has been paid keeping the rest unpaid at the time of execution and registration of the same. In this context, observation and decision of the Supreme Court of India in **Vidhyadhar Vs. Manik Rao & Anr. [(1999) 3 SCC 573]** is relevant. In this case a stranger to the sale deed challenged it on the ground of inadequacy of consideration money. Firstly, it was observed by the Supreme Court of India that there is a distinction between a deed which was intended to be real and operative between the parties and a deed which is fictitious in character and was never designed as a genuine document to effect transfer of title. In such a situation, it would be open to a stranger to impeach the deed as void and invalid on all possible grounds. The whole question depends upon the pleading of the parties as to whether a stranger to a deed can challenge it. Secondly, it was also observed and held by the Supreme Court of India :

> "**36.** The definition indicates that in order to constitute a sale, there must be a transfer of ownership from one person to another, i.e., transfer of all rights and interests in the properties which are possessed by that person are transferred by him to another person. The transferor cannot retain any part of his interest or right in that property or else it would not be a sale. The definition further says that the transfer of ownership has to be for a "price paid or promised or part-paid and part-promised". Price thus constitutes an essential ingredient of the transaction of sale. The words "price paid or promised or part-paid and part-promised" indicate that actual payment of the whole of the price at the time of the execution of sale deed is not a sine qua non to the completion of the sale. Even if the whole of the price is not paid but the document is executed and thereafter registered, if the property is of the value of more than Rs 100, the sale would be complete.

> **37.** There is a catena of decisions of various High Courts in which it has been held that even if the whole of the price is not paid, the transaction of sale will take effect and the title would pass under that transaction. To cite only a few, in *Gayatri Prasad* v. *Board of Revenue* [1973 All LJ 412] it was held that non-payment of a portion of the sale price would not affect validity of sale. It was observed that part-payment of consideration by the vendee itself proved the intention to pay the remaining amount of the sale price. To the same effect is the decision of the Madhya Pradesh High Court in *Sukaloo* v. *Punau* [AIR 1961 MP 176 : ILR 1960 MP 614] .
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> **38.** The real test is the intention of the parties. In order to constitute a "sale", the parties must intend to transfer the ownership of the property and they must also intend that the price would be paid either in praesenti or in future. The intention is to be gathered from the recital in the sale deed, the conduct of the parties and the evidence on record."

The Supreme Court of India decided **Janak Dulari Devi & Anr. Vs. Kapildeo Rai & Anr. [(2011) 6 SCC 555]** in different factual perspective and in respect of a specific transaction named as *"ta khubjul badlain"*. The ratio is not applicable in the present case and the Learned Appellate Court committed error in applying the principle in the present case.

Coming once again to the case in hand, there was no pleading that the sale should be set aside on the ground of partly unpaid consideration money. The vendor might have intended or at least evidence shows intended that the property should pass-over at the time of execution and registration of the deed. This intention was not and should not be known to the Respondent No. 1/Plaintiff as she was not present. She cannot say for that reason what was the intention between the vendor and the vendee. More importantly there is vague pleading in the plaint that consideration money had not been paid or part paid.

The Learned First Appellate Court failed to appreciate and consider this aspect and passed the judgment going beyond the scope of pleading. The Learned Appellate Court also failed to consider the true purport of the Section 54 of the Transfer of Property Act, 1882, as discussed above. For these reasons, the judgment and decree passed by the First Appellate Court suffers from serious error and is liable to be set aside.

In nutshell, the instant appeal is allowed. The judgment and decree dated 17/07/2014 passed by the First Appellate Court in Title Appeal No.6 of 2013 is hereby set aside.

The instant appeal is disposed of accordingly without cost.

Trial Court Record be returned forthwith.

(Sugato Majumdar, J.)