

Punit Ram Khunte Vs Tara Manikpuri

Court: Chhattisgarh High Court

Date of Decision: Oct. 4, 2023

Acts Referred: Constitution of India, 1950 " Article 141

Code Of Civil Procedure, 1908 " Order 7 Rule 11(a)

Transfer of Property Act, 1882 " Section 54

e Negotiable Instrument Act, 1872 " Section 138

Hon'ble Judges: Goutam Bhaduri, J; Sanjay S. Agrawal, J

Bench: Division Bench

Advocate: Arvind Shrivastava, A.N. Bhakta, Vivek Bhakta, Devershi Thakur

Final Decision: Dismissed

Judgement

1. Challenge in this appeal is to the judgment and decree dated 26-4-2018 passed by the Additional District Judge, Raipur, in civil suit No.59-A/2017

whereby the suit filed by the appellant/plaintiff was dismissed.

2. Brief facts of the case, as pleaded in the plaint, are that the plaintiff owned a land bearing Kh.No.217/1 admeasuring 3000 sq.ft. wherein

superstructure was raised on 1800 sq.ft. He entered into an agreement for sale on 18.11.2010 that the property in its entirety would be sold for a sale

consideration of Rs. 42,50,000/-. The cost of the suit property was Rs. 50.00 lacs. The plaintiff averred that during the execution of the sale deed, out

of sale consideration of Rs. 42,50,000/-, Rs. 30,00,000/- was paid by Cheque which the defendant availed on loan and for remaining Rs. 12,30,000/- a

cheque was given though in the sale deed, the amount of sale consideration was stated to be received in cash. At the same time, it was further agreed

that an agreement was executed, which purports that an amount of Rs. 12,30,000/- is being given by cheque which is entered as cash in the sale deed

and further if the cheque was dishonoured by the bank on subsequent point of time, the sale deed ipso facto would be cancelled. Subsequently when

the cheque was dishonoured, the plaintiff claimed that the sale deed has come to an automatic end whereas the defendants pursued for mutation of

their names in the revenue documents, which resulted into a cause of action to be in favour of the plaintiff. Therefore, the suit was filed for

cancellation of the sale deed and to restrain the defendants from interfering the possession of the plaintiff.

3. Written statement was filed on behalf of the defendants in which it has been submitted that the plaintiff offered for purchase of the suit property for

a sale consideration of Rs. 50.00 lacs, which was refused by the defendants, however, after due negotiations, the sale consideration was settled for

Rs. 42,50,000/- and initially Rs. 7,70,000/- was paid in cash and on 18.11.2010, a cheque of Rs. 12,30,000/- was given. The defendants further stated

that for the rest of the amount, Rs. 30.00 lacs loan would be availed from HDFC Bank and thereafter, the amount would be paid. In consequence

thereof, after obtaining loan of Rs. 30.00 lacs, a cheque of Rs. 30.00 lacs was given to the defendants. The defendants stated that it was agreed that

in case Rs. 12,30,000/- is paid in cash, the cheque would be returned to him. The defendant further stated that as per the agreement, an amount of Rs.

7,70,000/- was paid, however, on the subsequent time when Rs. 4,80,000 was paid and cheque was demanded back, but eventually the cheque was

not returned by the defendants. Instead, it was encashed through the Bank and by misusing the cheque, the complaint under the Negotiable

Instruments Act was filed. It further stated that despite receipt of Rs. 42,50,000/-, the plaintiff has not delivered the possession of the suit property and

after the sale deed has been executed, earlier agreement to this effect has come to an automatic end. Further the defendants stated that on

unsustainable ground, the application for mutation is being objected and dismissal of suit was prayed. The counter claim was also made by the

defendants for return of cheque of Rs. 12,50,000/- as also the declaration that the sale deed is valid and further possession of the suit property was

also claimed by way of counter claim.

4. On the basis of pleadings of the parties, the learned trial Court framed the issues and held that the plaintiff is not the owner of the suit property

comprised over Kh.No.217/1, P.H. No.180/1 Rani Durgavati Ward, Palash Vihar Colony, Colony, Mahavir Nagar Raipur and further held that the

agreement dated 18.11.2010 cannot be enforced. Further in respect of the counter claim, it was allowed to the extent to hand over the possession of

the suit property within a period of 30 days. Hence, this appeal.

5. Learned counsel for the appellant would submit that initially the prior agreement was superseded by the subsequent agreement wherein after a set

off of Rs. 7,70,000/-, the property was agreed to be sold for Rs. 42,30,000/-. He would submit that the evidence would show that out of that, Rs. 30.00

lacs was paid by availing bank loan and the rest of the amount Rs. 12,30,000/- was given by way of cheque though it was entered as a cash in the sale

deed. He would also submit that on the same date, agreement was entered between the parties as Ex.P-3, which would show that a cheque of Rs.

12,30,000/- was given though in the sale deed it was shown as cash receipt and it was agreed in between the parties that in case the cheque is

dishonoured, the entire sale deed would stand cancelled. He would next submit that the sale deed was executed on the promise of payment of sale

consideration but the sale consideration was not paid because of the fact that the Cheque of Rs. 12,30,000/-was dishonoured. Consequently, it would

lead to fraud. Hence declaration to the agreement Ex.P-3 which was agreed between the parties is required to be given effect for cancellation of the

entire sale deed. He would submit that in the agreed terms of the parties when such arrangements have been arrived at to show that payment has not

been made, the sale deed cannot be given effect to especially when the parties agreed upon to annul the sale deed.

6. Per contra, learned counsel for the respondent/defendant would submit that prior to the sale deed dated 18.11.2010, it was proceeded on an

agreement dated 07.07.2010 Ex.D-2. He would submit that in such agreement it would show that the amount of consideration was fixed for Rs.

42,50,000/-. He would further submit that as per the sale deed Ex.D-1, the entire sale consideration was received by the seller and thereafter, the sale

deed was executed. He would also submit that the entire sale consideration having been received, no oral evidence can be looked into when the

document is registered one. He placed reliance upon the decision rendered by the Supreme Court in the matter of Damodhar Narayan Sawale (D)

through LRs v Shri Tejrao Bajirao Mhaske & Ors. (Civil Appeal No.930 of 2023 decided on 4-5-2023). He would further submit that considering the

fact that the plaintiff has purchased the suit property for a valuable consideration and possession has not been delivered, the decree for possession

was passed in his favour. Therefore, the part of judgment and decree whereby the possession has been ordered which effected the dismissal of the

suit filed by the plaintiff is well merited . Hence the appeal filed by the plaintiff be dismissed.

7. We have heard learned counsel appearing for the parties at length and perused the record.

8. In respect of the suit property the sale deed is Ex.D/1, which shows that the suit property bearing khasra No.216/3 & 216/21 admeasuring 3000

sq.ft. wherein on the ground floor the house exist over 1800 sq.ft. situated at Mouja Purena, PH No.113/18, RI Circle Raipur-1, Ward No.45, Rani

Durgawati Ward, District Raipur. The suit property was sold by the plaintiff-Punit Ram Khunte to the defendant-Smt. Tara Manikpuri. The sale

consideration is shown as Rs. 42,50,000/- and it shows that Rs. 30,00,000/- has been paid by way of cheque of HDFC Bank dated 16-10-2010 and

cash of Rs. 12,50,000/- is paid on 18-11-2010. The sale deed is registered on 19-11-2010. The plaintiff stated that the actual value of the suit property

was of Rs. 50,00,000/- and the document Ex.P/3 is on record, which purport that earlier an agreement was executed which is substituted by the

subsequent agreement Ex.P/3 and the suit house was valued at Rs. 50,00,000/-. Out of that an amount of Rs. 7,70,000/-has been paid in cash and Rs.

30,00,000/- is being paid after taking a loan and a cheque of Rs. 12,30,000/- is being given and the registry amount shows Rs. 42,30,000/-. The

agreement further stated that if the cheque stands dishonoured then the sale deed would be deemed to be cancelled. The comparison of the sale deed

Ex.D/1, which was registered on 19-11-2010 and the agreement which was of 18-11-2010 shows that both the documents contradicts with each other.

The payment of consideration in the registered sale deed shows that for Rs. 12,50,000/- a cheque was given, which according to the plaintiff was

dishonoured. Another document has been produced showing the receipt of payment of Rs. 7,70,000/-, which is marked as Ex.D/7. The plaintiff stated

that after the cheque was presented for clearance the same was dishonoured, therefore, the amount of consideration having not been paid, the sale

deed would be deemed to be cancelled as per the agreement.

9. At this juncture, it would be relevant to quote the provisions of Section 54 of the Transfer of Property Act, 1882 (for short "the Act, 1882")

for ready reference :

"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.

In the case of a tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or

by delivery of the property.

Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale." A contract for sale of immovable property is a contract that a sale of such property shall take place on terms settled between

the parties.

It does not, of itself, create any interest in or charge on such property.

10. In the case of non payment of sale consideration, the issue came up for consideration before the Supreme Court in the matter of Dahiben Versus

Arvindbhai Kalyanji Bhanusali (Gajra) (2020) 7 SCC 366 wherein the Supreme Court at paras 29.7 held that if the sale consideration has not been

paid, it could not be a ground for cancellation of sale deed. Paras 29.7 & 29.9 are relevant here and quoted below :

29.7. Section 54 of the Transfer of Property Act, 1882 provides 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.”

The definition of “sale” indicates that there must be a transfer of ownership from one person to another i.e., transfer of all rights and interest in

the property, which was possessed by the transferor to the transferee. The transferor cannot retain any part of the interest or right in the property, or

else it would not be a sale. The definition further indicates that the transfer of ownership has to be made for a “price paid or promised or part-paid

and part-promised.” Price thus constitutes an essential ingredient of the transaction of sale.

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 registered sale deed. We find that the suit filed by the plaintiffs is vexatious, merit -

less, and does not disclose a right to sue. The plaint is liable to be rejected under Order 7 Rule 11(a).

11. A perusal of Kewal Krishan Vs. Rajesh Kumar 2021 SCC OnLine SC 1097 would show that the earlier judgment of the equal strength of the

Supreme Court Bench rendered in the matter of Dahiben (supra) was not under consideration while the subsequent judgment of Kewal Krishan v

Rajesh Kumar 2021 SCC OnLine SC 1097 is passed. Under the circumstances we would follow the judgment of Madhya Pradesh High Court in the

matter of J.B.O. Association vs. State of M.P. 2003 (1) MPLJ 513 wherein the High Court held that in case of conflict between two decisions of the

Apex Court Benches comprising of equal number of judges, decision of earlier bench is binding unless explained by the latter bench of equal strength

in which case the later decision is binding. Therefore, it was held that the decision of the earlier Division Bench unless distinguished by the decision of

latter Division Bench, would be binding on the High Court and the subordinate courts. Paragraph 9 is relevant and quoted hereinbelow:

“9. Having considered the matter with broader dimensions, we find that various High Courts have given different opinion on the question involved.

Some hold that in case of conflict between two judgments on a point of law, later decision should be followed; while others say that the Courts should

follow the decision which is correct and accurate whether it is earlier or later. There are High Courts which hold that decision of earlier Bench is

binding because of the theory of binding precedent and Article 141 of the Constitution of India. There are also decisions which hold that single Judge

differing from another single Judge decision should refer the case to larger Bench, otherwise he is bound by it. Decisions which are rendered without

considering the decisions expressing contrary view have no value as a precedent. But in our considered opinion, the position may be stated thus –

With regard to the High Court, a single Bench is bound by the decision of another single Bench. In case, he does not agree with the view of the other

single Bench, he should refer the matter to the larger Bench. Similarly, Division Bench is bound by the Judgment of earlier Division Bench. In case, it

does not agree with the view of the earlier Division Bench, it should refer the matter to larger Bench. In case of conflict between judgments of two

Division Benches of equal strength, the decision of earlier Division Bench shall be followed except when it is explained by the latter Division Bench in

which case the decision of latter Division Bench shall be binding. The decision of larger Bench is binding on smaller Benches.

In case of conflict between two decisions of the Apex Court, Benches comprising of equal number of Judges, decision of earlier Bench is binding

unless explained by the latter Bench of equal strength, in which case the later decision is binding. Decision of a larger Bench is binding on smaller

Benches. Therefore, the decision of earlier Division Bench unless distinguished by latter Division Bench is binding on the High Courts and the

Subordinate Courts. Similarly, in presence of Division Bench decisions and larger Bench decisions, the decisions of larger Bench are binding on the

High Courts and subordinate Courts. No decision of Apex Court has been brought to our notice which holds that in case of conflict between the two

decisions by equal number of Judges, the later decision is binding in all circumstances, or the High Courts and Subordinate Courts can follow any

decision which is found correct and accurate to the case under consideration. High Courts and subordinate Courts should lack competence to interpret

decisions of Apex Court since that would not only defeat what is envisaged under Article 141 of the Constitution of India but also militate The

common thread which runs through various decisions of apex Court seems to be that great value has to be attached to precedent which has taken the

shape of rule being followed by it for the purpose of consistency and exactness in decisions of Court, unless the Court can clearly distinguish the

decision put up as a precedent or is per incuriam, having been rendered without noticing some earlier precedents with which the Court agrees. Full

Bench decision in Balbir Singh's case (supra) which holds that if there is conflict of views between the two co-equal Benches of the Apex Court, the

High Court has to follow the Judgment which appears to it to state the law more elaborately and more accurately and in conformity with the scheme

of the Act, in our considered opinion, for reasons recorded in preceding paragraphs of this judgment, does not lay down the correct law as to

application of precedent and is, therefore, overruled on this point.

(Emphasis supplied)

12. Therefore, in the instant case if the plaint averments are accepted that the sale having been made, the only recourse left to the appellant was to

file a suit for recovery and evidence would show that for dishonour of the cheque proceeding has already been drawn and the complaint was filed

under Section 138 of the Negotiable Instrument Act. As such the agreement Ex.P/3 cannot be given overriding effect over registered document of

sale whereby the property has been transferred to the defendant. Consequently, the document Ex.P/3 wherein the plaintiff relied that in case non

payment the agreement deemed to be cancelled cannot be given a legal precedent.

13. In view of aforesaid discussion, we do not find any merit in the appeal, warranting interference in the impugned judgment and decree passed by

the Court below, which is just and proper.

14. In the result, the appeal sans merit is liable to be and is dismissed, leaving the parties to bear their own cost(s).

15. A decree be drawn accordingly.