

Monica Lamba Grishma Vs Vipul Mehta

Court: Jharkhand High Court

Date of Decision: Jan. 22, 2025

Acts Referred: Indian Penal Code, 1860 " Section 406, 420
Real Estate (Regulation and Development) Act, 2016 " Section 13(1)

Hon'ble Judges: Sanjay Kumar Dwivedi, J

Bench: Single Bench

Advocate: Amit Kumar Das, Siddharth Jain, Rohit Sinha, Paritosh Rai

Final Decision: Dismissed

Judgement

Sanjay Kumar Dwivedi, J

I.A. No.6377 of 2024

1. I.A. No.6377 of 2024 has been filed for expunging the name of appellant no.2 from the array of the appellants, who has left for his heavenly abode

on 27.04.2024.

2. Learned counsel for the appellants submits that the death certificate is annexed at Annexure-A to the said I.A. and the wife of appellant no.2 is

already made appellant as appellant no.1 in this appeal.

3. Learned counsel for the sole respondent is present and he has got no objection if the said I.A. is allowed.

4. Considering that appellant no.2 has left for his heavenly abode and his wife is already on record as appellant no.1, the prayer made in the I.A. is

allowed.

5. Accordingly, I.A. No.6377 of 2024 is disposed of.

6. Learned counsel for the appellants will delete the name of appellant no.2, in course of the day.

M.A. No. 112 of 2024

7. Heard Mr. Amit Kumar Das, learned counsel for the appellant and Mr. Rohit Sinha, learned counsel for the sole respondent.

8. This appeal has been preferred against the order dated 02.02.2024 passed by the learned Court of Jharkhand Real Estate Appellate Tribunal in

Appeal No.20 of 2023, whereby, the said appeal has been allowed and the judgment dated 26.08.2023 passed by the Court of Jharkhand Real Estate

Regulatory Authority in Complaint Case No.44 of 2021 has been set aside.

9. Mr. Amit Kumar Das, learned counsel for the appellant submits that appellant no.1 has entered into an agreement for sale with respondent on

05.10.2016 for sale of Flat No.2C, Block-B, Cosmic Apartment, measuring an area of 1850 sq.ft., for a total consideration of Rs.53,65,000/-, contained

in Annexure-1 to the memo of appeal. He further submits that the respondent paid Rs.5,00,000/- at the time of entering into the agreement for sale

vide cheque no.000009 dated 05.11.2016 of Bank of Baroda and cheque no.037603 dated 05.11.2016 of Dena Bank to appellant no.1. He then

submits that the respondent further paid a total amount of Rs.42,50,000/- through different installments and, therefore, a total amount of Rs.47,50,000/-

was paid to appellant no.1 against the consideration of the flat. He also submits that in the year 2020, there was a scheme of the Government of

Jharkhand wherein the properties below the value of Rs.50 Lakhs could be registered in the favour of women at a token amount of Re.1/- and,

accordingly, the respondent wanted to take the benefit of the scheme and, hence, the respondent requested the appellant to execute the deed of

conveyance at the amount of Rs.47,50,000/-. He submits that the appellant bonafidely believed the respondent and on her assurance to pay the

pending amount of Rs.8,65,000/- including the amount of Rs.2,50,000/- executed the deed of conveyance in favour of the respondent. He submits that

the deed was executed on 28.02.2020 in favour of the respondent, contained in Annexure-2 to the memo of appeal. He further submits that after

execution of the conveyance deed, the appellant demanded the pending amount, which was disputed by the respondent and, therefore, the appellant

filed Complaint Case No.686 of 2020, which was registered under Section 420 and 406 of the IPC. He also submits that O.S. No.09 of 2021 has also

been filed by the appellant for recovery of Rs.6,15,000/- in the form of money suit, which is still pending. He submits that the respondent filed

Complaint Case No.44 of 2021 which was rejected, however, the learned Appellate Tribunal has reversed the said order and directed the appellant to

give possession to the respondent. In this background, he submits that the learned Appellate Tribunal has erred in passing the said order as it was

understanding between the parties that remaining amount of Rs.6,15,000/- will be paid. He submits that in view of that, the possession has not been

handed over to the respondent.

10. Per contra, Mr. Rohit Sinha, learned counsel for the respondent submits that the notification for registration at Re.1/-, so far as women are

concerned, that has come on 19.06.2017 and the condition was made at Clause 1(iii) that the registration at Re.1/- will be applicable for amount upto

Rs.50 Lakhs and above the said amount, 3% registration fee will be charged. He submits that till date the possession has not been provided to the

respondent and the respondent has been put under unnecessary litigation, in which, she has already expensed much amount which is more than 3% of

the said amount. He then submits that in light of Section 13(1) of the Real Estate (Regulation and Development) Act, 2016, any agreement is required

to be registered and the agreement which has been referred is unregistered one. He further submits that the dispute with regard to Rs.6,15,000/- is

pending before the Court in the said O.S. and outcome of the same can be waited by the appellant, however, the possession in terms of the sale deed

is required to be given to the respondent. He submits that there is no illegality in the order.

11. In reply, Mr. Amit Kumar Das, learned counsel for the appellant submits that so far as the benefit of registration at Re.1/- issued vide notification

by the Government of Jharkhand is concerned, that has come into effect from the year 2017, whereas, the agreement was entered in the year 2016

and at that time, registration at Re.1/- was not the requirement.

12. In view of the above submissions of the learned counsel for the parties, the Court has gone through the agreement as well as other documents

annexed with the memo of appeal. In the agreement, total consideration amount is Rs.53,65,000/-, however, in the sale deed, the consideration amount

is Rs.47,50,000/- and pursuant to that the execution is already made in favour of the respondent. If such a situation is there, it is unbelievable that a

builder foregoes the amount of Rs.6,15,000/- only to facilitate the registration. There is no written agreement with regard to the further amount of

Rs.6,15,000/- and that dispute is already pending before the competent Court in O.S. No.09 of 2021 in the form of money suit. The sale deed is

executed in favour of the respondent, in light of the Real Estate (Regulation and Development) Act, 2016, which is meant for regulation and promotion

of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and

transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute

redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority

and the adjudicating officer and for matters connected therewith or incidental thereto.

13. After execution of the sale deed, possession is not provided to the respondent and that will amount to arbitrary action of the appellant and that will

be violation of purpose of the said Act, however, the money suit filed for recovery of Rs.6,15,000/- is the subject matter in O.S. No.09 of 2021.

14. The learned Appellate Tribunal looking into the amount for consideration mentioned in the sale deed has come to the conclusion that the amount

mentioned in the sale deed is the consideration amount and Rs.6,15,000/- has been forgone by the appellant and, as such, there is no illegality in the

impugned order passed by the learned Appellate Tribunal dated 02.02.2024 and, therefore, this appeal is, hereby, dismissed.

15. The respondent has agreed to pay the amount of Rs.2,50,000/- before the learned Tribunal and that will be complied by the respondent. The

appellant will handover the possession in terms of the judgment of the learned Tribunal to the respondent forthwith on payment of Rs.2,50,000/- as

undertaken by the respondent before the learned Tribunal.

16. So far as pending O.S. No.09 of 2021 and Complaint Case No.686 of 2020 are concerned, that will be decided on its own merit without prejudiced

to this order.

17. Pending I.A., if any, is disposed of.