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2026 SCC OnLine SC 1511

In the Supreme Court of India

(BEFORE J.B. PARDIWALA AND K. VINOD CHANDRAN, JJ.)

Raziya Begum and Others ... Appellants;

Versus

Nafisa Begum Abdul Hamid and Others ... Respondents.

Civil Appeal No. 7225 of 2011[§]

Decided on August 7, 2026

Advocates who appeared in this case :

Mr. Satyajit A. Desai, Adv., Mr. Sachin Patil, Adv., Mr. Pratik Kumar Singh, Adv., Mr. Sachin Singh, Adv., Mr. Shashank Upadhyay, Adv., Mr. Vishwesh S, Gadage, Adv., Ms. Anagha S. Desai, AOR, For Appellant(s)

Mr. Farrukh Rasheed, AOR, Ms. Harshita Singhal, Adv., Mr. Seraj Ahmed, Adv., Mr. Sayed M. Hurmul, Adv., For Respondent(s)

The Judgment of the Court was delivered by

K. VINOD CHANDRAN, J.:— Concurrent findings of the Trial Court and the Appellate Court were reversed by the High Court in a second appeal. The legal heirs of the original sole defendant are before us, and the respondents are the legal heirs of the original plaintiffs, a son and his mother. The plaintiffs filed a suit for declaration of two sale deeds, both dated 10.03.1975, as void and inoperative, to cancel these deeds and declare the plaintiffs as the absolute owners of the properties covered by the sale deeds. They further prayed for a permanent injunction against the sole original defendant, restraining him from interfering with the ownership and possession of the plaintiffs.

2. The plaint averments were that the two sale deeds were executed in the wake of debts accrued in the name of the plaintiffs in various financial institutions and the government departments. The original defendant came with a helping hand and agreed to find a purchaser for the property. A purchaser was brought, who left at the last minute, when the original defendant agreed to purchase their lands. The entire consideration was not available with the defendant, in which circumstances, he persuaded the plaintiffs to execute the sale deeds with respect to both the properties, handing over only part of the consideration. The total consideration for each of the properties fixed was Rs. 7,000/- (Rupees Seven thousand), out of which Rs. 2,500/- (Rupees Two thousand and five hundred) was handed over, as evident from the sale deeds itself. As per the clear recitals in the sale deeds,

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the defendant had retained Rs. 4,500/- (Rupees Four thousand and five hundred) each, so as to settle the dues remaining against the plaintiffs in the various institutions.

3. The defendant failed to satisfy the dues and hence when the plaintiffs repeatedly approached him, he executed an agreement with respect to one of the properties promising to handover the remaining Rs. 4,500/- and with respect to the other property, another agreement was executed, taking upon himself the responsibility to repay all the loans. The sale deeds were produced as Exhibit Nos. 66 and 67 and the agreements were produced as Exhibit Nos. 60 and 63 before the Trial Court, and in this appeal as additional documents along with translations.

4. The Trial Court after evaluating the evidence, found that the agreements related to a concluded sale and, though, there was only part payment of the sale consideration, even as per the agreement, there is no condition incorporated in the sale deed that refusal to pay the balance sale consideration would result in the cancellation of the sale deed. The further agreements only reaffirmed the obligation of the defendant to pay the balance consideration as per the sale deed i.e. Rs. 4,500/- each, totaling Rs. 9,000/-. A further contention taken by the plaintiffs that the property had other co-owners, members of the plaintiffs' family, was rejected finding that so long as the first plaintiff was alive, there was no question of any of his sons taking a share in his property.

5. On possession, it was found, based on the evidence led, that the proceedings under the Criminal Procedure Code, 1973 specifically under Section 145, resulted in the Sub Divisional Magistrate (SDM) taking over possession and later handing it over to the plaintiffs. The Trial Court found that the defendant has to pay the balance consideration with interest from 10.03.1975 to perfect his title. The plaintiffs' suit was dismissed with the finding that the plaintiffs were not entitled to; cancellation of the sale deeds, declaration of ownership or the injunction as prayed for. Insofar as the possession, the Trial Court refused to interfere, since it found that there was no claim for specific performance or reconveyance. We would rather justify the refusal to interfere in the possession to be, by reason of a counter claim not having been raised. Be that as it may, the Trial Court dismissed the suit, and the First Appellate Court affirmed it.

6. In second appeal, two questions of law were framed by the High Court: whether the sale deeds executed, without the entire sale consideration being paid especially in the wake of the subsequent agreements as also the dues of the plaintiffs remaining unpaid, can be found valid and binding on the plaintiffs and the second question as to whether the plaintiffs were entitled to a declaration of ownership and an

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injunction to retain peaceful possession.

7. The High Court found that the clear recitals in the sale deeds indicated that the defendant was obliged to satisfy the dues existing in the name of the plaintiffs before the Government Departments, Co-Operative Banks and Co-Operative Societies. The finding of the Trial Court and the Appellate Court that there was no conditional reconveyance stipulated, on the balance consideration not being paid, was found to be wrong. It was found that there was no evidence produced by the defendant to indicate the balance sale consideration having been paid or the dues remaining unpaid against the plaintiffs, having been satisfied. The plaintiffs having agreed to repay the amount of Rs. 5,000/- (Rupees Five thousand), it was directed that the same be paid with 9% simple interest from 10.03.1975 till 31.03.2010 and the suit was decreed declaring the plaintiffs to be the owner of the lands covered by the sale deeds *vide* Exhibit Nos. 66 and 67, since the sale deeds were inoperative and the possession, if at all the plaintiffs were deprived of it, was directed to be handed over.

8. Before us, learned Counsel for the appellants/legal heirs of the defendant, specifically referred to two decisions of this Court in *Vidhyadhar* v. *Manikrao*[1] and *Dahiben* v. *Arvindbhai Kalyanji Bhanusali (Gajra) Dead through Legal Representatives*[2]

9. Learned Counsel for the respondent on the other hand emphasized that the view of the High Court flows from the findings of the Trial Court itself. No fact finding of the Trial Court was disturbed and it was merely on the aspect of law, the binding nature of the sale deeds, in the absence of full consideration being paid, the High Court reversed the Trial Court judgment and decreed the suit. The High Court acted within the contours of the jurisdiction conferred under Section 100 of the Civil Procedure Code, 1908. It never reappreciated the evidence led or substituted the findings of the Trial Court but merely gave legal effect to the findings already rendered.

10. In *Vidhyadhar* (supra), it was held so in Paragraph Nos. 36, 37 and 38 with respect to Section 54 of the Transfer of Property Act, 1882[3]:—

> *"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*

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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 SCC OnLine All 63 : 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 *[1960 SCC OnLine MP 75 : AIR 1961 MP 176 : ILR 1960 MP 614].*

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."

11. *Dahiben* (supra) also, while interpreting Section 54 of the Act, held that actual payment of entire sale price at the time of execution of sale deed is not an essential condition for completion of sale. When a sale deed is registered, even upon part payment of the sale price, title would pass to the transferee. The non-payment of remaining part of the sale price would not invalidate it and the remedy would be to recover the balance sale consideration, but not cancellation of sale deed for non -payment of balance sale consideration.

12. Section 54 of the Act squarely applies to the above case. A reading of the translated sale deeds produced along with the appeal, clearly indicates that the defendant had retained Rs. 4,500/- for clearing the dues of the plaintiffs. Obviously, the same was not paid and later, by two agreements, the defendant agreed to pay the full consideration and to repay all the government loans.

13. The agreements were executed in the years 1975 and 1976. The suit was filed in 1984, in which case, the question of limitation also arises. The plaintiffs, without filing a suit for recovery of money; i.e., for balance sale consideration, attempted cancellation of the sale deeds, after executing it on receipt of part consideration, agreeing for the retention of balance consideration with the defendant to satisfy the dues of the plaintiffs. The sale, hence, has become final.

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14. Even if we understand the High Court having not entered into a reappreciation of facts, it is clear that the conclusion on the available facts was wrong. The sale deed executed with full knowledge of the part consideration alone having been passed, cannot be rendered void or inoperative merely because the balance consideration promised to be paid, which promise was incorporated in the sale deed, had not been complied with. The right of the plaintiffs was to file for recovery of balance sale consideration and not to seek declaration that the sale deeds were null and void; which they are not.

15. As has been noticed by the Trial Court, the appellants herein would have to pay the balance sale consideration with interest from 10.03.1975 at the rate of interest charged on the plaintiffs, by their creditors and seek possession of the property, if at all they so desire.

16. The Trial Court and the First Appellate Court refused to interfere with the possession of the plaintiffs, which we also are not inclined to.

17. The Appeal stands allowed, reversing the judgment of the High Court and restoring that of the Trial Court as affirmed by the First Appellate Court.

18. Pending application(s), if any, shall stand disposed of.

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[1] (1999) 3 SCC 573

[2] (2020) 7 SCC 366 : (2020) 4 SCC (Civ) 128

[3] *Hereinafter referred to as 'the Act'*

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