

Sarita Vs. Pardeep

Present : Sh. Anand Yadav, Ld. Counsel for Plaintiff.

Case file received in compliance of order dated 16.12.2023 passed by Sh. Sushil Kumar, Ld. District Judge, Nuh. Perusal of said order reveals that the case has been remanded back with directions to pass speaking order about the deficiency of court fees.

2 Arguments regarding deficiency of court fees heard. It is submitted by Ld. counsel for plaintiff that since the suit land is agricultural in nature and plaintiff has not sought possession of suit land so she is not liable to pay Ad-valorem court fee. It is submitted that sufficient court fee of Rs. 25/- has already been affixed on the plaint. It is prayed that the plaintiff may be permitted to proceed further with the present suit without requirement of furnishing Advalorem court fees.

3 After hearing the submissions, when case file is carefully perused it is revealed that by way of present suit plaintiff has sought declaration to the effect that sale deed bearing vasika No. 1604 dated 18.10.2019 be declared null & void and not binding upon the plaintiff on the ground that entire sale consideration was not paid to her. It is the plaintiff's claim that she got executed sale deed bearing vasika No. 1604 dated 18.10.2019 in favour of defendants and out of the total consideration of Rs. 11,00,000/-, a sum of Rs. 3,00,000/- was received in cash whereas cheque bearing No. 162922 dated 18.11.2019 amounting to Rs. 8,00,000/- was received as balance consideration. It is submitted that when plaintiff presented the said cheque for encashment, it was dishonored. It is alleged that defendants got executed and registered the disputed sale deed by playing fraud and misrepresentation with plaintiff. It is submitted that since

disputed sale deed is without consideration, thus, does not confer any right, title or interest in favour of the defendants.

4. In the present case, as far as relief of declaration is concerned, it has been sought to the effect that sale deed bearing vasika No. 1604 dated 18.10.2019 is null & void mainly on the ground of non-payment of part consideration. Law in this regard was recently settled by the Hon'ble Supreme Court of India in authority titled as **Dahiben Vs. Arvindbhai Kalyanji Bhanusali (Gajra) through LRs and others [2020 (7) SCC 366]**, wherein, it was held that even if the entire sale consideration has not infact 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 the registered sale deed.

5. In the present case, it is not disputed that part consideration was received by the plaintiff and the dispute is regarding the remaining consideration only. Accordingly, the relief of declaration as prayed for cannot be granted and the present suit can be permitted to be continued only regarding recovery of the balance sale consideration of Rs. 8,00,000/-. Since, the nature of present suit turns out to be a Recovery suit, hence, the plaintiff is certainly liable to pay ad-valorem court fees on the sum of Rs.8,00,000/-.

6. Now the case is adjourned to 05.02.2024 for payment of Advalorem Court Fee on Rs. 8,00,000/-

Amit Verma
Addl. Civil Judge (Sr. Divn.)
Nuh – 04.01.2024