

IN THE HIGH COURT OF JHARKHAND AT RANCHI

F.A. No. 124 of 2023

Kamala Raju and Anr.	...	...	Plaintiffs/Appellants
Versus			
Shivjee Sharma	...	...	Defendant/Respondent

CORAM :HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Appellants	: Mr. Rahul Kr. Gupta, Advocate
	: Mr. Vipul Poddar, Advocate
For the Respondent	: Mr. Pandey Neeraj Rai, Advocate
	: Mr. Navneet Sahay, Advocate

36/12.12.2025

Learned counsel for the parties are present.

2. Learned counsel for the respondent has submitted that his arguments would be touching upon the factual aspects and also legal aspect with respect to Section 54 of the Transfer of Property Act read with Sections 6, 30, 31 and 64 of the Negotiable Instruments Act and Section 34 of the Specific Relief Act.

3. With respects to the facts, the learned counsel for the respondent has submitted that as per the case of the plaintiffs, first sale deed was executed on 07.02.2014 and the second one was executed on 17.05.2014, if the turn of events as narrated in the plaint and the natural course of conduct are taken is taken into consideration, then there was no occasion to execute the second sale deed dated 17.05.2014.

4. He submits that on 07.02.2014, the sale deed was executed upon issuance of four cheques which was followed by three letters dated 22.02.2014, 28.03.2014 and 08.04.2014 in connection with first sale deed. The learned counsel submits that in the letter dated 22.02.2014, a letter was said to be served upon the plaintiffs that when the defendant went for mutation, he came to know that the property cannot be mutated as the property is a government land and the defendant requested the plaintiffs to return the cheque and initiate the process of cancellation. The letter dated 28.03.2014 is a reminder to that effect and the letter dated 08.04.2014 is the letter said to have been issued by the plaintiffs by which the plaintiffs claimed that all

the cheques were returned. The sale deed was marked exhibit-1 and letters dated 22.02.2014, 28.03.2014 and 08.04.2014 were marked Exhibit-2, 2/1 and 2/2 respectively.

5. The learned counsel submits that since the defendant was conscious of the fact that the sale deed was to be cancelled and the cheques were to be returned with respect to the first sale deed, there was no occasion for the defendant to enter into second sale deed on 17.05.2014. The learned counsel submits that the description of the property in schedule-II and Schedule-III is identical except with respect to the area. He submits that the property in Schedule-II and Schedule-III appears to be adjoining to each other. The learned counsel then submits that this itself indicate that exhibit-2, 2/1 and 2/2 were forged and fabricated documents.

6. The learned counsel then referred to the ***second sale deed dated 17.05.2014*** and submits that identical letters with respect to second sale deed have also been said to have been issued i.e. dated 01.06.2014, 15.06.2014 and 01.07.2014 which have been marked exhibit-2/3, 2/4 and 2/5 respectively. Both the set of letters with respect to the 1st sale deed and the 2nd sale deed have the same tenure and it appears that they all have been prepared at one point of time.

7. The learned counsel has submitted that aforesaid conduct is absolutely unnatural and therefore this aspect of the matter is to be kept in mind while considering the genuineness of Exhibit-2 to 2/5. He submits that the factual case which has been set up by the plaintiffs does not appear to be genuine and probable.

8. The learned counsel then referred to the plaint filed in the previous suit which was marked exhibit-E and has highlighted the difference between paragraph 9 and 10 of the present plaint and corresponding paragraph 9 and 10 of the previous plaint and has submitted that in the present suit, much improvement has been made and there is a difference in the case of the plaintiffs.

9. The learned counsel has then referred to exhibit-3 which is said to be an agreement of sale to 3rd party which is dated 12.08.2016 and has submitted that this has to be seen with reference to paragraph 18,

19 and 22 of the plaint. He submits that the legal notice was issued by the plaintiffs on 23.08.2016 which was subsequent to exhibit-3 and its reply was given on 09.09.2016, but in paragraph 22 the term *thereafter* has been mentioned.

10. The learned counsel has submitted that the plaintiffs has made out a case that the agreement of sale with 3rd party was made after the issuance of legal notice but considering the sequence of facts as mentioned in the plaint and it has also been stated in paragraph 22 that the possession was delivered to 3rd party. He submits that the plaint reveals that after the notices the property was delivered to 3rd party right on the date of execution of agreement with 3rd party.

11. The learned counsel then referred to Order VIII Rule 5 of CPC and has submitted that merely because the six letters in exhibit-2 series have not been specifically denied in the written statement, but still the court considering the aforesaid circumstances would certainly see as to whether the plaintiffs have duly proved the aforesaid exhibits in the light of the flow of events and the circumstances and as to whether the plaintiffs have been able to prove the facts as narrated in the plaint.

12. The learned counsel then referred to ***Section 54 of the Transfer of Property Act*** and has submitted that it is to be seen as to whether passing of money was intended to be a condition precedent in the present case. He submits that for that purpose, the recital of the sale deed is relevant and the fact that the cheques were issued itself reveals that the money would come to the seller only upon presentation of cheque and apparently the execution of registered sale deed coupled with payment through cheque would fall under promise to pay at a future date and cannot be termed as payment on the date of execution of the sale deed. The learned counsel submits that under such circumstances if the payment is not made by encashment of cheque for any reason whatsoever the seller has a remedy to sue for the consideration amount but the fact that the sale deed was registered and the title had passed on the date of registration cannot be disputed. The learned counsel has also submitted that the registered deed itself uses

the word that the title and possession passed on the date of registration and therefore non-encashment of cheques at a later point of time will not make the sale deed null and void for want of consideration on the date of registration of the sale deed. The learned counsel has in particular referred to paragraph 3 of the sale deed. He submits that the execution and registration was intended to be on the same day and the title passed on the same day, the payments stood deferred as the cheques were to be encashed. The learned counsel then referred to Sections 6, 30, 31 and 64 of the Negotiable Instruments Act and has submitted that the recovery through cheque is either through presentation and in case the cheque is bounced through the legal process of proceeding under Section 138 of the Negotiable Instruments Act and in case the cheque is not presented or not honoured for any reason and recourse of Section 138 is not taken, then the party has a legal remedy of filing a suit for recovery of money. The learned counsel submits that therefore an objection has been taken in the written statement that instead of filing of money suit the plaintiff has chosen to file a suit for declaration of the sale deed null and void.

13. The learned counsel has referred to the judgment passed by the Hon'ble Supreme Court reported in *(2009) 4 SCC 193 (Kaliaperumal vs. Rajagopal & Anr.)* and has placed the entire facts of the said case and has submitted that in the said case, the party intended to pass the entire consideration amount on the date of registration, but only part payment was made and therefore the Hon'ble Supreme Court was of the view that the registration of the sale deed did not pass the title of the property. The learned counsel has submitted that the principle of law involved in connection with passing of title of the property has to be based on the facts and circumstances of each case and the intention of the party on the date of registration as to whether the parties intended to transfer the property only after receipt of the entire consideration by the vendor as a condition precedent is required to be examined. He has referred to paragraph 15 to 21 and also paragraph 22 of the aforesaid judgment.

14. The learned counsel submits that the judgment which has been relied upon by the appellants reported in **(2022) 18 SCC 489 (Kewal Krishan vs. Rajesh Kumar & Others)** does not help the appellants in any manner, inasmuch as, in the present case it is not a case that the sale deed was without payment of price or it did not provide for payment of price at a future date rather the sale deed was coupled with issuance of cheque which was to be encashed at later point of time.

15. The learned counsel has submitted that the intention of the party would also reflect from the recital of the sale deed and if the recitals are not clear then the conduct of the parties is required to be seen.

16. The learned counsel also submits that the payment of consideration has been made through alternative mode to the plaintiffs or his nominees which is much more than the amount involved in the cheques involved in this case.

17. The learned counsel has referred to Section 34 of the Specific Relief Act, and has submitted that the suit was barred by the said section. He submits that the corresponding section under the Specific Relief Act, 1877 was Section 42. He has referred to the judgement passed by Hon'ble Supreme Court reported in **(1973) 2 SCC 60 (Ram Saran and Another Vs. Smt. Ganga Devi)** and has referred to the facts of the said case, wherein the plaintiffs had brought a suit with respect to property which was partly in possession of the plaintiffs and partly in possession of the defendants, but did not seek any claim for recovery of possession, and consequently, the Hon'ble Supreme Court held that the suit was barred by Section 42 of the Specific Relief Act of 1877.

18. The learned counsel submits that in the present case, the learned trial court has recorded a finding that the defendant was in possession of the property. He submits that the plaintiffs have not sought any relief for recovery of possession, and therefore, suit was barred under Section 34 of the Specific Relief Act.

19. The learned counsel has then referred to the judgement passed by Hon'ble Supreme Court reported in **(2014) 14 SCC 502**

(Venkataraja and Ors. Vs. Vidyane Doureradjaperumal) and referred to paragraphs 23 and 24 and submitted that once the written statement was filed stating that the defendant was in possession of the suit property, the plaintiffs ought to have amended the plaint seeking recovery of possession, but no such steps were taken by the plaintiffs and ultimately, the possession having been found in favour of the defendant, the suit was hit by Section 34 of the Specific Relief Act.

20. The learned counsel for the respondent has referred to the point of possession. He submits that both the parties have led oral evidence on the point of possession, which are contrary to each other and in the pleadings also, they have claimed possession. He has submitted that the sale deed itself reveals that the possession of the suit property was given on the date of execution of the sale deed, and therefore, in the matter of conflicting oral evidence, the document which is a registered sale deed is required to be seen and the learned counsel then refers to Sections 91 and 92 of the Indian Evidence Act.

21. The learned counsel submits that the oral evidence is excluded on the face of the documentary evidence i.e. registered sale deed which itself reveals that the possession was given on the date of registration. He has then submitted that the plaintiffs claimed to be in possession of the property and in order to come out of the rigors of Section 34 of Specific Relief Act, it was for the plaintiffs to prove that the plaintiffs were in possession of the property. He submits that the burden of proof was on the plaintiffs to prove that they were in possession of the property, which the plaintiffs miserably failed to prove.

22. The learned counsel has referred to Sections 101 to 104 of Evidence Act and submits that the plaintiffs having failed to discharge their burden with regards to claim of possession and on the basis of the registered sale deed the defendant has successfully demonstrated that the possession was delivered to the defendant on the date of registration, therefore, the suit was rightly held to be barred by Section 34 of the Specific Relief Act.

23. The learned counsel for the respondent has also submitted that the applicability of Section 54 of the Transfer of Property Act is to be seen from another angle. He submits that in the judgements which has been referred to by him, it reveals that the factum of giving possession by itself is an important aspect to determine as to what the parties intended at the time of registration of the sale deed.

24. The learned counsel submits that the fact that the possession was handed over to the defendant at the time of execution of the sale deeds itself speaks volumes that the parties intended that the property should pass on to the defendant on the date of execution of the sale deeds and the payment of consideration was at a future date upon collection of the amount covered by the cheques which were the mode of payment of consideration and therefore, the burden of proof was upon the plaintiffs by virtue of Section 103 of the Indian Evidence Act to prove that the possession was with the plaintiffs and not with the defendant.

25. The learned counsel has also submitted that the plaintiffs has alleged that the defendant has acted in a clandestine and fraud manner, but there are no particulars of such clandestine manner in the plaint. For this, he has referred to the judgement passed by the Hon'ble Supreme Court reported in *(2010) 5 SCC 104 (Shanti Budhiya Vesta Patel and Ors. Vs. Nirmala Jayprakash Tiwari and Ors.)* paragraphs 22, 32, 33.

Rejoinder arguments of the appellants(plaintiffs)

26. The learned counsel for the plaintiffs, in rejoinder, has submitted that the suit property being a vacant land, the point of possession/dispossession has to be seen from a different angle. He has submitted that he shall cite a judgement to demonstrate that when the suit property is a vacant land what has to be seen is who has the right to possess the same. The learned counsel thereafter submits that the question of title being passed on the date of registration of the sale deed, does not arise in view of the specific stand taken by the defendant in paragraph 10 of the written statement that the cheque was to be encashed only after mutation. He submits that this itself reveals

that the intention of the party was that the title would pass after mutation, and consequently, after payment of consideration and it is an admitted fact on record in paragraph 23 of cross-examination of D.W. 1 that the mutation has not been done in favour of the defendant.

27. Post this case for further arguments of the appellants on 15.12.2025 to be taken as a first case at 10.30 a.m.

(Anubha Rawat Choudhary, J.)

12.12.2025.

Mukul/Saurav/