

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 M/s Sugandha Jaiswal Poddar, Advocate
For the Respondent	: Mr. Pandey Neeraj Rai, Advocate Mr. Rohit Ranjan Sinha, Advocate Mr. Navneet Sahay, Advocate Mr. Rishav Raj, Advocate

37/15.12.2025

In furtherance of the arguments of the appellants in rejoinder , the learned counsel for the appellants has referred to Section 34 of the Specific Relief Act and has submitted that admittedly no prayer for recovery of possession has been made in the plaint as the plaintiffs remained in possession of the property. Since, the plaintiffs were in possession, the proviso to Section 34 is not attracted and therefore, the suit was not hit by Section 34 of the Specific Relief Act. He also submits the fact that the plaintiffs were in possession was not in dispute as the plaintiffs were the owner of the suit property which was vacant land. Further, it was for the defendant to plead and prove the exact date of possession which is totally absent in this case and they are trying to coverup by referring to the sale deeds which is also not in accordance with law.

2. The learned counsel for the appellants has further submitted that the only material evidence which has been brought on record with regard to possession of the defendant are the sale deeds themselves. He has submitted that admittedly the consideration amount as mentioned in the sale deed was not paid and therefore, the defendant is not permitted to rely on the sale deed itself to claim that he was in possession of the property as the sale deeds are void. He has referred to paragraph 1 of the sale deed to submit that the entire consideration

amount was stated to have been paid and the seller was said to have delivered possession of the suit property and since the consideration itself was not paid, the defendant cannot claim possession. The learned counsel has referred to Exhibit-2, 2/1 and 2/2 and he submits that even as per these exhibits the defendant has indicated that the property was not capable of being mutated in his name as the property was declared to be a government land and the vacant land was of no use of the defendant. In such circumstances the defendant cannot claim possession.

3. Learned counsel submits that the payment for consideration was the most important part of the transaction and only upon payment the right would accrue under the deeds. Since, there was no payment, therefore, the sale deeds were *void ab-initio*.

4. He has reiterated the judgment which is cited by him reported in **(2025) SCC OnLine SC 1961 [Shanti Devi (Since Deceased) through Lrs. Goran vs. Jagan Devi and Others]** and has submitted that the earlier judgment passed in the case of **Kewal Krishnan v. Rajesh Kumar** reported in **(2022) 18 SCC 489** was duly considered in paragraph 34 of the judgment and has submitted that it has been held that if a sale deed in respect of immovable property is executed without payment of price, it is not a sale at all in the eyes of law, specifically under Section 54 of the Transfer of Property Act, 1882 and such a sale without consideration would be void and would not affect the transfer of the immovable property. He submits that as per sale deed, the price was paid through cheques and in fact the consideration amount was not paid in the manner stated in the sale deeds themselves.

5. The learned counsel for the appellants has also relied upon the judgment passed by the Hon'ble Supreme Court reported in **(2003) 12 SCC 219 (Ashan Devi & Anr. vs. Phulwasi Devi & Others)**. He has referred to paragraph 23 and 24 of the aforesaid judgment to submit that the possession in connection with the vacant land is to be seen in the light of the said judgement when admittedly, the present property are vacant land .

6. The learned counsel has then tried to distinguished the judgment relied upon by the respondents which is reported in **(2009) 4 SCC 193 (Kaliaperumal vs. Rajagopal & Anr.)** and has in particular referred to paragraph 18 onwards to submit that in a case where the sale deed itself reveals that the consideration amount is paid and if it is found that the consideration amount was not paid, then the sale is void. He has submitted that the intention of the parties is required to be gathered from the facts and circumstances and particular the recital of the sale deed itself. In the present case, the parties intended to transfer the property upon payment of consideration amount through cheques and merely because it was mentioned in the sale deeds that the possession was being delivered, the same is not conclusive. The possession was to be delivered coupled with payment of the consideration amount which was never paid and consequently the sale deeds were required to be declared *void-ab-initio*.

7. The learned counsel has then referred to Section 54 of the Transfer of Property Act and has submitted that since the sale deed itself revealed that the consideration was paid and it was nobody's case that the consideration will be paid in future or it was partly paid or partly to be paid in future, therefore, none of the three categories regarding payment of consideration under Section 54 of the Transfer of Property Act is satisfied in the present case and the consideration having not been paid in terms of the sale deed itself, the sale deed was void.

Further arguments of the respondents.

8. The learned counsel for the respondent in furtherance to and in response to the submissions made in rejoinder by the learned counsel for the plaintiffs (appellants) has referred to the evidence of the sole defendant and has submitted that in paragraph 6 he has made a statement that he was in possession of the property, but during cross-examination, numerous suggestions have been given, but there is no such suggestion on the point of possession. However, this Court finds that even in his evidence-in-chief, there is no mention that he was given possession on the date of execution of the sale deed, though in

paragraph 6 he has made a reference that he was in possession of the property.

9. On the date with respect to the date of possession, the learned counsel for the respondent has only relied upon the registered sale deeds which itself reveals that on the date of registration the possession was handed over to the defendant.

10. The learned counsel has further submitted that the plaintiffs never asked for any local inspection of the property rather none of the parties asked for local inspection to find out the actual possession, but it was for the plaintiffs to take steps for local inspection, but no steps having been taken as the burden of proof was upon the plaintiffs that they were in possession of the property and therefore the plaintiffs have failed to establish their case.

11. The learned counsel has also submitted that as per the sale deeds, two aspects are very clear; one is passing of cheques and the other is passing of possession. He submits that these two aspects were enough to hold that the sale deeds were duly executed upon payment of consideration and the possession also passed simultaneously .

12. The learned counsel has then referred to Section 114 of the Indian Evidence Act to submit that the very fact that the defendant applied for mutation itself reveals that he after having taken possession went to the authority for mutation and then came to know that the property cannot be mutated in his name as the property was a government land and this aspect is apparent from the letters exhibited by the plaintiffs themselves to demonstrate that the defendant had gone to the Circle Office for the purposes of mutation. The learned counsel has also submitted that the fact that the registration slips were given to the defendant also reveals that the possession also must have been given to the defendant .

13. So far as the judgment passed in the case of *Shanti Devi (Supra)* is concerned, the learned counsel for the respondent submits that in the said case, there was also a prayer for recovery of possession.

14. With respect to the judgment passed in the case of *Ashan Devi (Supra)*, the learned counsel submits that the present case also relates to the question as to who was in possession of the property and in the said judgment, the Hon'ble Supreme Court has observed that in case of property being vacant, the possession has to be seen from a different angle, but once the parties are in dispute on the point of possession, the evidence has to be seen as to who was in possession of the property. The sale deeds themselves were enough evidence that the possession was handed over to the defendant on the date of execution of the sale deeds. He submits that it was not even the case of the plaintiffs that the possession is to be derived on the basis of title and nobody was in actual physical possession of the property.

15. The learned counsel has also relied upon the judgment passed by the Hon'ble Supreme Court reported in *(2011) 6 SCC 508 (Noida Entrepreneurs Association vs. Noida & Others)* paragraph 25 to submit that although there was no plea seeking declaration of title, but still the proviso to Section 34 will come into play as once the sale deeds are declared void, the title would naturally go back to the plaintiffs. He submits that the plea of declaration of the sale deeds are void amounts to seeking a declaration of title and therefore proviso to Section 34 is very much attracted in the present case.

16. Arguments concluded.

17. Judgment is reserved.

(Anubha Rawat Choudhary, J.)

15.12.2025.

Mukul/Rakesh