

RAJASTHAN HIGH COURT

सत्यमेव जयते

HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

S.B. Civil First Appeal No. 105/2026

Smt. Sarla Pareek W/o Shri Ram Kumar, Aged About 62 Years,
Resident Of 38 Shiv Colony Mahamandir Jodhpur Through
General Power Of Attorney Hoder Draham Pareek Son Of Shri
Ram Kumar Aged 39 Years Resident Of 38 Shiv Colony
Mahamandir District Jodhpur

----Appellant

Versus

1. Sawal Ram S/o Dhanna Ram, Aged About 41 Years,
Resident Of Naharo Ki Dhani Rohila Kalla Jhanwar District
Jodhpur
2. Dharmendra Kala S/o Panna Ram, Aged About 45 Years,
Resident Of 3/2 Kudi Bhagtasni Housing Board Jodhpur

----Respondents

For Appellant(s)

:

Mr. Raj Bishnoi with
Mr. Amit Saran

For Respondent(s)

:

Mr. Muktesh Maheshwari with
Mr. Gaurav Ranka
Ms. Akshita Depura

HON'BLE MS. JUSTICE REKHA BORANA
Order

16/03/2026

1. The present first appeal has been filed aggrieved of order dated 10.10.2025 passed by Additional District Judge No.1, Jodhpur Metropolitan (hereinafter referred to as the 'learned Trial Court') in Civil Original Suit No.66/2024 (330/2024) whereby the learned Trial Court proceeded on to allow application under Order 7 Rule 11 r.w. Section 151, CPC as filed on behalf of defendant No.1-respondent and as a consequence, proceeded on to dismiss the suit for cancellation of sale deed, as filed by the plaintiff-appellant.
2. The application under Order 7 Rule 11, CPC was filed by defendant No.1 on the ground that no suit for cancellation of sale

deed can be maintained only on the count that the consideration amount was not paid.

3. The learned Trial Court while relying upon the Apex Court judgment in ***Dahiben Vs. Arvindbhai Kalyanji Bhanusali (Gajra) (Dead) Through Legal Representatives & Ors.; 2020 (7) SCC 366*** and of this Court in ***M/s. Key Pee Buildtech Pvt. Ltd. Vs. Smt. Shahjahan Begum; 2015 (3) Civil Court Cases 615*** held the suit to be not maintainable.

4. Learned counsel for the appellant, while relying upon the Apex Court Judgments in ***Kewal Krishan Vs. Rajesh Kumar & Ors.; AIR 2022 SC 564*** and ***Shanti Devi (Since Deceased) Through LRs. Goran Vs. Jagan Devi & Ors.; 2025 INSC 1105***, submits that an agreement without consideration is void and hence, the suit for cancellation of such agreement/sale is very much maintainable.

5. Per contra counsel for the respondents while relying upon the Apex Court judgments in ***Vidhyadhar Vs. Manikrao & Anr.; 1999 (3) SCC 573*** and ***Dahiben Vs. Arvindbhai Kalyanji*** (supra) submits that in a matter wherein the sale is complete i.e. the title has been transferred, the non-payment of the sale price would not affect the validity of the sale. The non-payment of sale consideration cannot be a ground for cancellation of the sale deed. The same could only entitle the plaintiff to sue for recovery of consideration amount but cannot pray for cancellation of the sale deed.

6. Heard the Counsels. Perused the record.

7. In the present matter, the execution of the power of attorney (P/A) by the plaintiff is not disputed. Further, execution of the sale

deed by the P/A holder is also not disputed. The only averment of the plaintiff is that she did not receive any sale consideration in consequence to the sale. Meaning thereby, the sole ground raised in the plaint for cancellation of sale deed is the non-payment of the consideration amount.

8. In *Vidhyadhar (supra)*, Hon'ble the Apex Court, while dealing with an identical issue observed that, even if whole of the price is not paid, but the document is executed and thereafter registered, the sale would be complete, and the title would pass on to the transferee under the transaction. The non-payment of a part of the sale price would not affect the validity of the sale. Once the title in the property has already passed, even if the balance sale consideration is not paid, the sale could not be invalidated on this ground.

9. But the issue herein would be whether the above ratio would apply in those cases also where not the part/balance, but the complete consideration amount remains unpaid? Herein, whether the principal of the agreement/document without consideration being void, would not apply?

10. The answer to the above issue can be found in *Dahiben (supra)*, wherein the Court held that even if the averments of the plaintiffs are taken to be true that the entire sale consideration had not in fact been paid, it could not be a ground for cancellation of the sale deed. The Court observed that therein, the plaintiffs may have other remedies in law for recovery of the balance consideration but could not be granted the relief of cancellation of registered sale deed. The Court further held that in such matters, the plaint is liable to be rejected under Order 7 Rule 11 (a), CPC.

11. So far as the judgments in **Kewal Krishan (supra)** and **Shanti Devi (supra)** as relied upon by counsel for the appellant are concerned, both relate to the matters wherein the documents in question were sham documents. In both these matters, the Court recorded a specific finding that the sale deeds as executed were sham transactions and hence, no consideration was ever paid.

12. The above ratio would definitely not apply to the present matter wherein the plaintiff admitted the execution of the power of attorney as well as the execution of the sale deed by the power of attorney holder, for a consideration of Rs.2,00,000/-. The pleadings as made by plaintiff and as relied upon by the learned Trial Court were as under:

".... प्रतिवादी संख्या 2 द्वारा आम-मुख्यारनामे के निष्पादन के समय वादीनी को यह आश्वासन दिया गया कि जैसे ही भूखण्ड के खरीददार मिल जाएंगे उससे प्रतिफल राशि प्राप्त कर अदा कर दी जाएगी, तत्पश्चात् प्रतिवादी संख्या 2 द्वारा आम-मुख्यारनामे में दिए गए अधिकारों का प्रयोग करते हुए उक्त भूखण्ड का बेचान प्रतिवादी संख्या 1 को किया जाकर प्रतिवादी संख्या 1 के पक्ष में बेचाननामा भी निष्पादित कर पंजीबद्ध करवा लिया, जो बेचाननामा उप-पंजीयक तृतीय के कार्यालय में दिनांक 29.04.2024 को पंजीबद्धशुदा है।"

"... प्रतिवादी संख्या 2 द्वारा उक्त भूखण्ड का बेचान प्रतिफल प्रतिवादी संख्या 1 को 2,00,000/- रूपए किया गया था, परन्तु बेचान प्रतिफल की राशि आज दिन तक वादीनी श्रीमती सरला को प्राप्त नहीं हुई है। "

13. A bare perusal of the above pleadings makes it clear that it was not the case of the plaintiff that the sale deed had been executed without any consideration, rather the specific averment was that defendant No.2 sold out the property to defendant No.1

for a sale consideration of Rs.2,00,000/-. The only issue raised was that the said consideration amount was not paid to the plaintiff. In that view, it cannot be held that the sale was without any consideration and hence, the principle that an agreement without consideration is void, would not apply to the present matter.

14. This Court is of clear opinion that the present matter would definitely stand covered by the ratio laid down by Hon'ble the Apex Court in the judgment of ***Vidhyadhar (supra)*** and followed in ***Dahiben (supra)***. The learned Trial Court rightly rejected the plaint under Order 7 Rule 11, CPC.

15. The order impugned therefore does not deserve any interference and the present first appeal is hence, **dismissed**.

16. Stay petition and pending applications, if any, stand **disposed of**.

(REKHA BORANA),J