



AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 14-6-2024

Judgment delivered on 20-6-2024

FA No. 15 of 2024

[Arising out of judgment and decree dated 20-12-2023 passed by the 7th Additional District Judge, Raipur, in civil suit No.20-A/2021]

1. M.D. Ashif Memon S/o Late M.D. Akbar Aged About 43 Years
R/o Near Nurani Maszid, Raja Talab, Raipur, Tehsil And District
Raipur, Chhattisgarh.

---- Appellant/Defendant No.1

Versus

1. Noor Begam D/o Mohammad Yakub Aged About 56 Years R/o
E-68, Aishwarya Kingdom, Kachna Road, Raipur, Tehsil And
District Raipur, Chhattisgarh.

---- Respondent/Plaintiff

1. State Of Chhattisgarh Through Collector, Raipur, Tehsil And
District-Raipur, Chhattisgarh.

---- Respondent/Defendant No.2

For Appellant/Def.No.1 Mr. Manoj Paranjape, Advocate

For Respondent No.1/Plaintiff Mr. Kshitij Sharma, Advocate

For State/Def.No.2 Mr. Abhishek Singh, Panel Lawyer

Hon'ble Mr. Justice Goutam Bhaduri &
Hon'ble Mrs. Justice Rajani Dubey

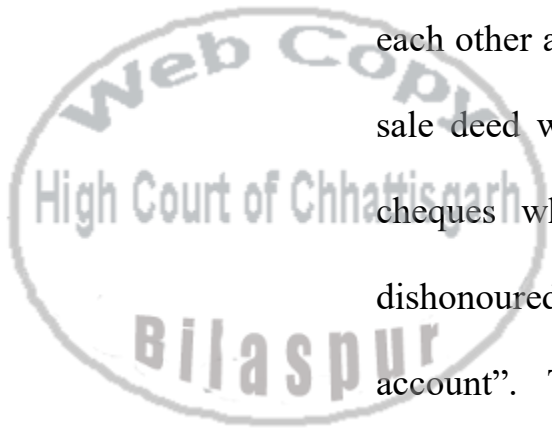
CAV Judgment

Per Goutam Bhaduri, J.

1. Challenge in this appeal is to the judgment and decree dated
20-12-2023 passed by the 7th Additional District Judge, Raipur, in
civil suit No.20-A/2021.



2. The facts of the case, in brief, are that the suit was filed by Noor Begam (plaintiff/respondent No.1) against M.D. Ashif Memon (defendant No.1/appellant), pleading, *inter alia*, that the plaintiff is the owner and in possession of land bearing khasra No.808/1 rakba 0.704 hectares. The said land was sold to the defendant by sale deed dated 23-6-2018, which was registered on 26-6-2018. The sale consideration was ₹ 3,09,76,000/- and in lieu of payment seven cheques of different denomination were given and it was assured that on presentation of said cheques the same will be honoured. The plaintiff and the defendant since were known to each other as such believing on the statement of the purchaser the sale deed was executed by the plaintiff in his favour. The said cheques when were deposited for clearance the same were dishonoured with an endorsement that “insufficient funds in account”. Though intimation was sent to the purchaser that the cheques have been dishonoured, but despite that the amount was not paid. The plaintiff stated that she demanded amount, but eventually it was not paid and sale consideration of ₹ 3,09,76,000/- remains unpaid. The publication was made for demand of money in the newspaper, but despite that the money was not paid and eventually the suit was filed for declaration and permanent injunction. The prayer was made for cancellation of the sale deed dated 23-6-2018, which was registered on 26-6-2018 and was not binding on the plaintiff. Further permanent injunction





was sought for that the suit property should not be transferred to any third party.

3. The defendant refuted the claim and stated that possession of the suit property has been handed over to him after execution of the sale deed, which was also endorsed in the recital of the sale deed. It was further stated that the plaintiff and the defendant were known to each other as such it was agreed to purchase the land and different meetings were held in presence of the broker. It was disclosed to the seller that in order to purchase the land the brother of the defendant may have to obtain loan, which may take some time. Despite the said fact, the seller agreed and received an amount of ₹ 12.00 lacs in cash. Thereafter, the sale deed was registered initially in favour of the brother of the defendant on 16-3-2017. According to the defendant, another land bearing khasra No.351 was purchased by the brother of the purchaser in the year 2017 and authentication (प्रमाणीकरण) was not done as such the sale of property bearing khasra No.808/1 area 76000 sq.ft. was offered to be sold. The purchaser agreed to purchase the same and in lieu of consideration of earlier sale transaction, which did not materialise the land was got levelled and subsequently as per the sale deed the cheque was paid and sale deed got registered. According to the purchaser, it was agreed that the amount spent in levelling the land would be adjusted towards the sale consideration. The purchaser stated that he spent more than ₹ 20.00 lacs in levelling the land and certain dispute with respect to





demarcation arose in between the parties, which led to filing of criminal complaint. The defendant admitted in his written statement that he is ready and willing to tender the sale consideration to the seller. Rest of the averments were denied. On the contrary, the defendant stated that since in the intervening period the price of land escalated the seller changed her stand to have more money, therefore, the dispute arose.

4. The learned trial Court on the basis of pleadings framed as many as seven issues and it was held that the amount of sale consideration tendered by cheque, which is shown in the sale deed, was not paid and accordingly it was held that the registered sale deed dated 26-6-2018 is null and void. Learned trial Court further held that no fraud was played while execution of the sale deed and it was held in favour of the defendant and no permanent injunction was granted in favour of the plaintiff.

5. (i) Learned counsel appearing for the appellant/defendant would submit that the evidence of the parties would show that apart from the sale consideration, which is shown in the sale deed, considerable amount was paid in cash by the seller to the purchaser and in respect of the sale deed the dispute arose with respect to certain demarcation as such the cheques were not honoured. However, after filing of the suit he was ready and willing to pay the entire amount. Learned counsel would place reliance upon the decision rendered by the Supreme Court in the matter of *Dahiben v Arvindbhai Kalyanji*



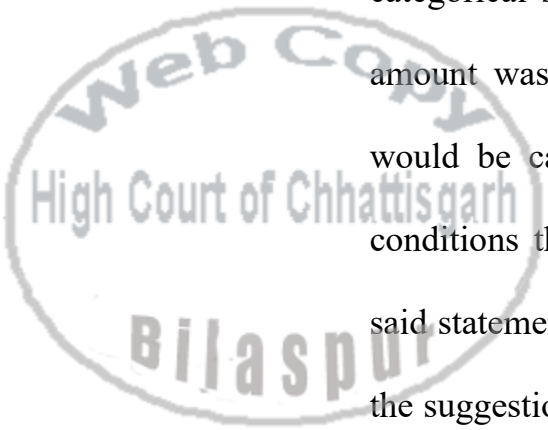


*Bhanusali (Gajra)*¹ and *Kewal Kishan v Rajesh Kumar*² to submit that sale once has been made and possession delivered, the intention of the parties would be governed by the provisions of Section 54 of the Transfer of Property Act, 1882 (for short ‘the TP Act’). Therefore, the only course would be left out to ask for the amount.

(ii) Learned counsel would also submit that in this case, the defendant-purchaser has categorically admitted that he is ready and willing to pay the amount and, as such, the sale deed cannot be declared as a nullity. Referring to the statement of DW-1 Mohammad Arif Memon, learned counsel would submit that categorical statement was made that during levelling of land hefty amount was incurred by the purchaser and after that demarcation would be carried out and the amount would be paid. On those conditions the sale deed was executed. He would submit that the said statement remained unrebutted. Learned counsel would refer to the suggestion made by the plaintiff to the defendant wherein at para 30 it was suggested that possession has been handed over would go to show that the registry has been completed. Learned counsel would submit that the trial Court has completely misdirected itself to interpret Section 54 of the TP Act to hold that the sale would be void as the cheques, which were paid for payment got bounced. Therefore, the impugned judgment and decree is liable to be set aside.

1 (2020) 7 SCC 366

2 2021 SCC OnLine SC 1097



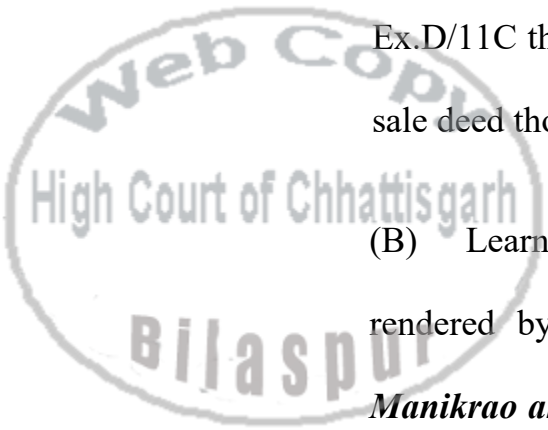


6. (A) Learned counsel appearing for the respondent No.1/plaintiff, *ex adverso*, would submit that albeit the sale deed was registered by Ex.P/1 the recital of the same engrafts that in case the cheques are dishonoured the sale deed would be cancelled, therefore, if the cheques which were tendered dishonoured which automatically would cancel the sale deed as per the intention of the parties. Learned counsel would place reliance upon the decision rendered by the Supreme Court in the matter of *Kaliaperumal v Rajgopal and Another*³ to submit that the recital in the sale deed would be relevant to know the nature of the transaction. He would further submit that the learned trial Court has rightly held that as per the document Ex.D/11C the possession of the land is with the seller, therefore, the sale deed though was executed cannot be given effect.

(B) Learned counsel would also place reliance upon the decision rendered by the Supreme Court in the matter of *Vidyadhar v Manikrao and Another*⁴ to submit that when the possession was not handed over the sale deed cannot be said to have been executed. Referring to Ex.D/2 & Ex.D/6 learned counsel would submit that when the notice was issued to the purchaser to place the documents for expenses incurred he could not file the same. It would go show that nothing was done by the purchaser and false statement was made. He would submit that the statement of purchaser in other proceeding would show that he was apprehensive of the fact that part of land would be acquired as such he did not deliberately pay the

3 (2009) 4 SCC 193

4 (1999) 3 SCC 573





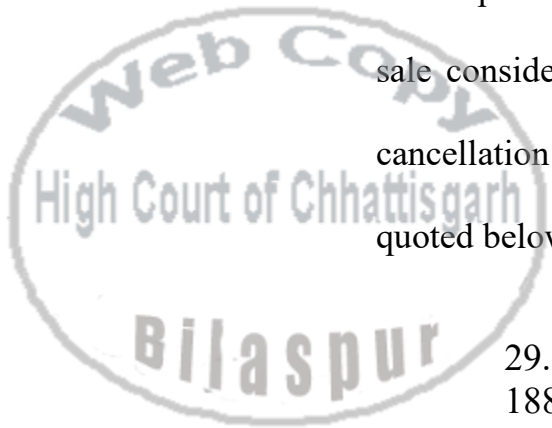
amount of sale consideration and it was after exchange of notice the seller filed the civil suit for cancellation of the sale deed. Learned counsel would submit that the impugned judgment and decree is well merited, which do not call for any interference of this Court.

7. We have heard learned counsel appearing for the parties at length and perused the record.
8. The primary question which comes to fore is that when the sale deed has been executed by Ex.P/1 whether it can be declared null and void if the cheques tendered as a consideration of it are dishonoured.
9. The Supreme Court in the matter of *Dahiben* (supra) held that if the sale consideration has not been paid, it could not be a ground for cancellation of sale deed. Paras 29.7 & 29.9 are relevant here and quoted below :

29.7 Section 54 of the Transfer of Property Act, 1882 provides as under:

“54. “Sale defined.--”Sale” is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.”

The definition of “sale” indicates that there must be a transfer of ownership from one person to another i.e., transfer of all rights and interest in the property, which was possessed by the transferor to the transferee. The transferor cannot retain any part of the interest or right in the property, or else it would not be a sale. The definition further indicates that the transfer of ownership has to be made for a “price paid or promised or part-paid and part-promised”. Price thus constitutes an essential ingredient of the transaction of sale.





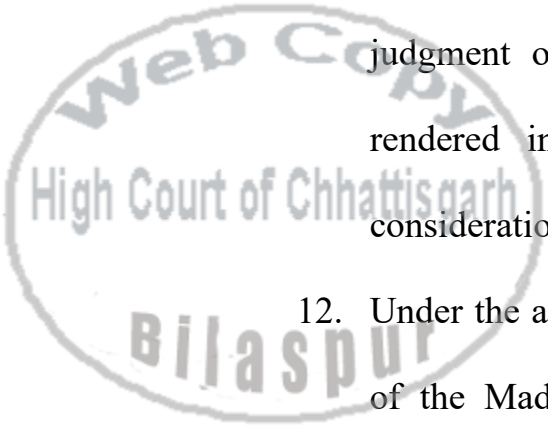
29.9 In view of the law laid down by this Court , even if the averments of the plaintiffs are taken to be true, that the entire sale consideration had not in fact been paid, it could not be a ground for cancellation of the sale deed. The plaintiffs may have other remedies in law for recovery of the balance consideration, but could not be granted the relief of cancellation of registered sale deed. We find that the suit filed by the plaintiffs is vexatious, merit-less, and does not disclose a right to sue. The plaint is liable to be rejected under Order 7 Rule 11(a).

10. Learned counsel would submit that in the matter of *Kewal Kishan* (supra) the Supreme Court held that if the sale consideration is not paid, the sale deed can be declared void.

11. Bare perusal of *Kewal Kishan* (supra) would show that the earlier judgment of the equal strength of the Supreme Court Bench rendered in the matter of *Dahiben* (supra) was not under consideration while the said judgment is passed.

12. Under the aforesaid circumstances we would follow the judgment of the Madhya Pradesh High Court rendered in the matter of *J.B.O. Association v State of M.P.*⁵ wherein the High Court held that in case of conflict between two decisions of the Apex Court Benches comprising of equal number of judges, decision of earlier bench is binding unless explained by the latter bench of equal strength in which case the later decision is binding. Therefore, it was held that the decision of the earlier Division Bench, unless distinguished by the decision of latter Division Bench, would be binding on the High Court and the subordinate courts. Paragraph 9 is relevant and quoted hereinbelow:

5 2003 (1) MPLJ 513





“9. Having considered the matter with broader dimensions, we find that various High Courts have given different opinion on the question involved. Some hold that in case of conflict between two judgments on a point of law, later decision should be followed; while others say that the Courts should follow the decision which is correct and accurate whether it is earlier or later. There are High Courts which hold that decision of earlier Bench is binding because of the theory of binding precedent and Article 141 of the Constitution of India. There are also decisions which hold that single Judge differing from another single Judge decision should refer the case to larger Bench, otherwise he is bound by it. Decisions which are rendered without considering the decisions expressing contrary view have no value as a precedent. But in our considered opinion, the position may be stated thus –



With regard to the High Court, a single Bench is bound by the decision of another single Bench. In case, he does not agree with the view of the other single Bench, he should refer the matter to the larger Bench. Similarly, Division Bench is bound by the Judgment of earlier Division Bench. In case, it does not agree with the view of the earlier Division Bench, it should refer the matter to larger Bench. In case of conflict between judgments of two Division Benches of equal strength, the decision of earlier Division Bench shall be followed except when it is explained by the latter Division Bench in which case the decision of latter Division Bench shall be binding. The decision of larger Bench is binding on smaller Benches.

In case of conflict between two decisions of the Apex Court, Benches comprising of equal number of Judges, decision of earlier Bench is binding unless explained by the latter Bench of equal strength, in which case the later decision is binding. Decision of a larger Bench is binding on smaller Benches. Therefore, the decision of earlier Division Bench unless distinguished by latter Division Bench is binding on the High Courts and the Subordinate Courts. Similarly, in presence of



Division Bench decisions and larger Bench decisions, the decisions of larger Bench are binding on the High Courts and subordinate Courts. No decision of Apex Court has been brought to our notice which holds that in case of conflict between the two decisions by equal number of Judges, the later decision is binding in all circumstances, or the High Courts and Subordinate Courts can follow any decision which is found correct and accurate to the case under consideration. High Courts and subordinate Courts should lack competence to interpret decisions of Apex Court since that would not only defeat what is envisaged under Article 141 of the Constitution of India but also militate The common thread which runs through various decisions of apex Court seems to be that great value has to be attached to precedent which has taken the shape of rule being followed by it for the purpose of consistency and exactness in decisions of Court, unless the Court can clearly distinguish the decision put up as a precedent or is per incuriam, having been rendered without noticing some earlier precedents with which the Court agrees. Full Bench decision in *Balbir Singh's case* (supra) which holds that if there is conflict of views between the two co-equal Benches of the Apex Court, the High Court has to follow the Judgment which appears to it to state the law more elaborately and more accurately and in conformity with the scheme of the Act, in our considered opinion, for reasons recorded in preceding paragraphs of this judgment, does not lay down the correct law as to application of precedent and is, therefore, overruled on this point.”

(Emphasis supplied)

13. In view of the above, we would like to infer that sale deed cannot be cancelled for want of sale consideration.
14. The respondent/plaintiff has heavily relied upon the decision rendered by the Supreme Court in the matter of *Kaliaperumal* (supra) wherein it has observed thus at paras 18 & 19 :





18) Normally, ownership and title to the property will pass to the purchaser on registration of the sale deed with effect from the date of execution of the sale deed. But this is not an invariable rule, as the true test of passing of property is the intention of parties. Though registration is prima facie proof of an intention to transfer the property, it is not proof of operative transfer if payment of consideration (price) is a condition precedent for passing of the property.

19) The answer to the question whether the parties intended that transfer of the ownership should be merely by execution and registration of the deed or whether they intended the transfer of the property to take place, only after receipt of the entire consideration, would depend on the intention of the parties. Such intention is primarily to be gathered and determined from the recitals of the sale deed. When the recitals are insufficient or ambiguous the surrounding circumstances and conduct of parties can be looked into for ascertaining the intention, subject to the limitations placed by Section 92 of Evidence Act.

15. The aforesaid judgment rendered in the matter of *Kaliaperumal* (supra) was considered by the Supreme Court in the matter of *Yogendra Prasad Singh v Ram Bachan Devi*⁶ wherein the Court considered the decision rendered in the matter of *Janak Dulari Devi and Another v Kapildeo Rai and Another*⁷ in which *Kaliaperumal* (supra), which is relied on by the respondent, was considered. Reiterating the decision rendered in *Janak Dulari Devi* (supra) the Supreme Court held that normally, on the execution and registration of the sale deed, the sale would be complete even if the sale price was not paid, and it will not be possible to cancel the sale deed unilaterally. The exception was carved out to this rule is stated in *Kaliaperumal* (supra). The

6 2023 SCC OnLine SC 894 : 2023 LiveLaw (SC) 582

7 (2011) 6 SCC 555





practice of *ta khubzul badlain* in Bihar was recognised as an exception and in a particular exception which is covered it was held that a duly executed sale deed will not operate as a transfer in *praesenti* but postpones the actual transfer of title, from the time of execution and registration of the deed, to the time of exchange of equivalents that is registration receipt and the sale consideration. In *Yogendra Prasad Singh* (supra) the Supreme Court held thus at paras 12 & 13 :

12. A sale deed of an immovable property is executed in accordance with Section 54 of the Transfer of Property Act, 1882 (for short, 'the 1882 Act'). There cannot be any dispute that normally, on the execution of a registered Sale Deed by the owner of the property, the title in the property subject matter of the Sale Deed stands transferred to the purchaser. Considering the principles laid down in sub-section (4)(b) of Section 55 of the 1882 Act, the seller will have a charge over the property subject matter of the sale for unpaid consideration and he can enforce the charge by filing a suit.

13. The entire case of the defendants is based on the decision of this Court in the case of *Janak Dulari Devi*. In paragraph 20 of the said decision this Court held thus:

“20. We have referred to several decisions of the Patna High Court in detail to demonstrate the existence of the established practice of *exchanging equivalents (ta khubzul badlain)*. The effect of such transactions in Bihar is that even though the duly executed and registered sale deed may recite that the sale consideration has been paid, title has been transferred and possession has been delivered to the purchaser, the actual transfer of title and delivery of possession is postponed from the time of execution of the sale deed to the time of exchange of the registration receipt for the consideration, that is, *ta khubzul badlain*.”

(emphasis added)





Paragraph 24 of the decision reads thus:

“24. We hasten to add that the practice of *ta khubzul badlain* (of title passing on exchange of equivalents) is prevalent only in Bihar. Normally, the recitals in a sale deed about transfer of title, receipt of consideration and delivery of possession will be evidence of such acts and events; and on the execution and registration of the sale deed, the sale would be complete even if the sale price was not paid, and it will not be possible to cancel the sale deed unilaterally. The exception to this rule is stated in *Kaliaperumal* [(2009) 4 SCC 193 : (2009) 2 SCC (Civ) 101]. The practice of *ta khubzul badlain* in Bihar recognises that a duly executed sale deed will not operate as a transfer *in praesenti* but postpones the actual transfer of title, from the time of execution and registration of the deed, to the time of *exchange of equivalents*, that is, registration receipt and the sale consideration, if the intention of the parties was that title would pass only on payment of entire sale consideration. As a result, until and unless the duly executed and registered sale deed comes into the possession of the purchaser, or until the right to receive the original sale deed is secured by the purchaser by obtaining the registration receipt, the deed of sale remains merely an agreement to be performed and will not be a completed sale. But in States where such a practice is not prevalent, possession of registration receipt by the vendor, may not, in the absence of other clear evidence, lead to an inference that consideration has not been paid or that title has not passed to the purchaser as recited in the duly executed deed of conveyance. Where the purchaser is from an outstation, the vendor being entrusted with the registration receipt, to collect the original sale deed and deliver it to the purchaser, is common. Be that as it may.”

(emphasis added)

Thus, this Court held that normally, on the execution and registration of a sale deed





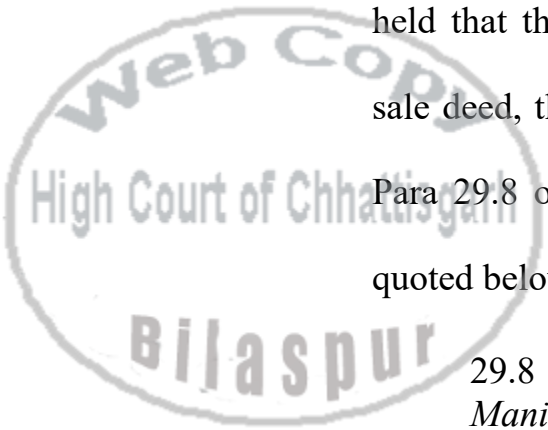
containing recitals regarding the payment of consideration and delivery of possession, the sale is complete even if the sale price is not paid and, therefore, it will not be possible to cancel the sale deed in its entirety. However, the exception to the said rule is the practice of *ta khubzul badlain*. The use of the expression *ta khubzul badlain* in a sale deed by itself will not be determinative of the true nature of the transaction. It cannot be read in isolation. All the terms and conditions and recitals in the document will have to be considered to decide the real nature of the transaction.

16. The decision rendered by the Supreme Court in the matter of *Vidyadhar* (supra), relied by the plaintiff, was considered by the Supreme Court in the matter of *Dahiben* (supra) wherein it was held that the intention is to be gathered from the recitals of the sale deed, the conduct of the parties, and the evidence on record.

Para 29.8 of the aforesaid judgment is relevant and the same is quoted below :

29.8 In *Vidhyadhar v. Manikrao* [*Vidhyadhar v. Manikrao*], this Court held that the words “price paid or promised or part-paid and part-promised” indicates that actual payment of the whole of the price at the time of the execution of the sale deed is not a sine qua non for completion of the sale. Even if the 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. In order to constitute a “sale”, the parties must intend to transfer the ownership of the property, on the agreement to pay the price either in praesenti, or in future. The intention is to be gathered from the recitals of the sale deed, the conduct of the parties, and the evidence on record.

(emphasis added)





Thus, the contention of the plaintiff that only recitals of payment must be considered for gathering interest of parties is not correct.

17. Even otherwise, the oral evidence could be adduced to show that the recitals in a deed were nominal or were not intended to be acted upon. The Supreme Court in the matter of *Hindu Public v Rajdhani Puja Samithee*⁸ held thus at para 20 :

20. It is in the evidence of witnesses examined on behalf of the “Hindu Public” before the Assistant Commissioner that para (a) of the aims and objects was introduced along with para (b) so as to ensure that the request for grant of lease of this very land was not rejected by the Government on the ground that land could not be leased exclusively for religious purposes. On this aspect, the Assistant Commissioner rejected the oral evidence as inadmissible as it contradicts the recitals in the deed of registration of the Society in view of Sections 91 and 92 of the Evidence Act, 1872. In our view, this is not correct in law. Oral evidence could be adduced to show that the recitals in a deed were nominal or were not intended to be acted upon or that they were not meant to alter the existing state of affairs. Oral evidence could therefore be adduced to show that the Society's main concern was the celebration of the Durga Puja festivals etc. and that other activities were subsidiary. Therefore, the Deputy Commissioner was right in relying on this part of the oral evidence.

(emphasis added)

18. The statement of plaintiff at para 22 would show that she admitted the fact that the purchaser has got his name mutated in the revenue record and during such mutation of name the seller had not objected to it. Further at para 42 it was stated that before the sale the subject land was in her possession meaning thereby after the

8 1999 (2) SCC 583



sale deed she divested herself out of the possession. This is further corroborated by the suggestion given at para 30 of the cross-examination of the defendant wherein it was stated that along with the registry the physical possession was handed over and the cheques were presented without his knowledge whereas it was informed that before the cheques are presented the purchaser should be intimated. At the same time, the sale deed (Ex.P/1) records that the possession of the suit land was handed over. The plaintiff on the contrary stated that she has not read the contents of the sale deed till she was examined before the Court.

19. Applying the well settled principles of law and for the reasons stated hereinabove, the impugned judgment and decree is set aside. The appellant/defendant No.1 is directed to remit the sale consideration to the respondent No.1/plaintiff within a period of six weeks from the date of this judgment along with interest at the rate of 6% per annum w.e.f. 26-6-2018.

20. In the result, the appeal is allowed with the aforesaid observations. No order as to cost(s).

21. A decree be drawn accordingly.

Sd/-

(Goutam Bhaduri)
Judge

Sd/-

(Rajani Dubey)
Judge

Gowri



HEAD NOTE

(a) Oral evidence could be adduced to show that the recitals in a deed were nominal or were not intended to be acted upon.

मौखिक साक्ष्य यह साबित करने हेतु प्रस्तुत किया जा सकता है कि विलेख में वर्णित कथन नाममात्र के लिए थे या उनके निष्पादन का आशय नहीं था।

(b) In case of conflict between two decisions of the Apex Court, Benches comprising of equal number of Judges, decision of earlier Bench is binding unless explained by the latter Bench of equal strength, in which case the later decision is binding.

उच्चतम न्यायालय की ऐसी दो पीठें जिसमें एक समान सदस्य हैं के द्वारा दिए गए निर्णयों के बीच मतभेद होने की स्थिति में, पूर्व पीठ द्वारा दिया गया निर्णय बंधनकारी होगा जब तक कि बाद वाली पीठ जिसमें उतने ही सदस्य संख्या हैं के द्वारा इस सम्बन्ध में स्पष्टीकरण नहीं दिया जाता है और इस प्रकार स्पष्टीकरण दिए जाने पर बाद वाला निर्णय बंधनकारी होगा।

