



NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No.345 of 2019

- Ramkumar Rajak S/o Late Shiv Prasad Rajak Aged About 65 Years R/o Shitlapara Kanker, Thana And District Uttar Baster Kanker Chhattisgarh. (Plaintiff), District : Kanker, Chhattisgarh

---- Appellant/Plaintiff

Versus

1. Smt. Geetadevi Gupta W/o Ajay Gupta Aged About 48 Years R/o Shitlapara Kanker, Thana And District Uttar Baster Kanker Chhattisgarh., District : Kanker, Chhattisgarh
2. Vishal Gupta S/o Ajay Gupta Aged About 22 Years R/o Shitlapara Kanker, Thana And District Uttar Baster Kanker Chhattisgarh., District : Kanker, Chhattisgarh
3. State Of Chhattisgarh Through Collector, District Uttar Baster Kanker Chhattisgarh., District : Kanker, Chhattisgarh

---- Respondents

(Cause title is taken from CIS)

Present:-

Shri Parag Kotecha, counsel for the appellant.
Shri Rohitashva Singh and Shri P. Dutta, counsel for respondents No.1 & 2.
Shri Sanjay Pathak, Panel Lawyer for the State/respondent No.3.

Division Bench: Hon'ble Shri Justice Sanjay S. Agrawal &

Hon'ble Shri Justice Sachin Singh Rajput

Order On Board

by Sanjay S. Agrawal, J.

20/03/2023

1. This appeal has been preferred by the plaintiff under Section 96 of the Code of Civil Procedure, 1908 questioning the legality and propriety of the judgment and decree dated 31.01.2019 passed by the Additional District Judge (FTC), Uttar Bastar, Kanker in Civil Suit No.7-A/2016, whereby the plaintiff's suit seeking cancellation of registered deed of sale dated



01.07.2016, has been dismissed. The parties shall be referred hereinafter as per their description before the Court below.

2. Briefly stated the facts of the case are that the plaintiff instituted a suit claiming declaration to the effect that the registered deed of sale executed by him in favour of defendant No.1-Smt. Geeta Devi Gupta on 01.07.2016 in relation to the property in question bearing Khasra No.109/1 admeasuring 0.40 hectare, situated at Village Shitlapara, Tahsil and District Uttar Bastar-Kanker be declared as null and void. According to the plaintiff, an agreement to sale was executed on 01.07.2016, whereby it was agreed by the plaintiff for the alienation of the property in question for a consideration of Rs.65 Lakhs and, out of the said sale consideration, Rs.20 lakhs was given to him by said defendant No.1 through cheque and Rs.40 lakhs by cash, while for remaining amount of Rs.5 lakhs, a cheque was issued by the son of defendant No.1 namely Vishal Gupta, which was, however, dishonoured on 25.07.2016. It is, therefore, contended by the plaintiff that without paying the entire sale consideration to him, the alleged sale was obtained by said defendant by playing fraud upon him and, therefore, the same be declared as null and void.

3. While contesting the aforesaid claim, it was pleaded by defendant No.1 in her written statement that after passing the entire sale consideration, the alleged sale was executed and, it has been denied specifically that any agreement was executed for the alienation of the property in question for a consideration of Rs.65,00,000/-. It is pleaded further that the suit as framed and instituted without paying the ad valorem court fee on the sale consideration, as mentioned in the alleged sale, deserves to be dismissed.

4. After considering the evidence led by the parties, the trial Court has



framed as many as 7 issues and that by considering the evidence led by the parties, arrived at a conclusion that the alleged registered deed of sale (Ex.P-4) was executed after passing of entire sale consideration to the plaintiff and held further that no agreement as such was ever executed on 01.07.2016 for the alienation of the property in question for a consideration of Rs.65 lakhs as claimed by the plaintiff. It held further while entertaining the Issue No.6 that since the plaintiff was the executant to the alleged sale, ad valorem court fee at the market value of the suit property was to be paid, but, instead, he paid only a sum of Rs.13,652/-, which is, however, not in accordance with law. In consequence, the suit was dismissed which has been impugned by way of preferring this appeal.

5. Learned counsel appearing for the appellant submits that since a fraud and misrepresentation has been alleged by the plaintiff in his plaint and as the contents of the alleged sale was not read over to him, therefore, the alleged sale was null and void from its inception and the Court below ought to have held the same to be null and void. It is contended further that since the alleged sale was null and invalid, no ad valorem court fee was, therefore, required to be paid. Having failed to examine the facts and circumstances of the case in its proper manner, the trial Court has committed a serious illegality in dismissing the claim. In support, he placed his reliance upon the decision rendered by the Supreme Court in the matter of **Kewal Krishan vs. Rajesh Kumar**, reported in **AIR 2022 S.C. 564**.

6. On the other hand, learned counsel appearing for the respondents No.1 and 2 have supported the impugned judgment and decree as passed by the trial Court.

7. We have heard learned counsel appearing for the parties and perused



the entire record carefully.

8. From perusal of the record, it appears that the property in question bearing Khasra No.109/1 admeasuring 0.40 hectare situated at Village Shitlapara, Tahsil and District Uttar Bastar-Kanker was sold to defendant No.1-Smt. Geeta Devi Gupta under the registered deed of sale (Ex.P-4), said to have been executed by the plaintiff on 01.07.2016, while putting her in possession thereof. It appears from the perusal of the alleged sale (Ex.P-4), the property in question was sold for a consideration of Rs.20,00,000/- and much more of it was received by the plaintiff as reflected from para-5 of the plaint. Although, it was pleaded by the plaintiff that as per the agreement dated 01.07.2016, it was agreed to be sold for a consideration of Rs.65,00,000/- and the entire amount has been paid, except Rs.5,00,000/- as the cheque issued to this effect was dishonoured. It is, however, to be observed herein based upon the principles laid down by the Supreme Court in the matter of ***Dahiben vs. Arvinbhai Kalyanji Bhanusali (Gajra)***, reported in **(2020) 7 SCC 366**, that the remedy for recovery of it, if any, would lie somewhere else, but cannot be a ground for the cancellation of the alleged sale. It has been observed by the Supreme Court in this regard at para 29.9, which is relevant for the purpose, reads as below:-

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, meritless, and does not disclose a right to sue. The plaint is liable to be rejected under Order 7 Rule 11 (a).”

9. In so far as the principles laid down in the matter of ***Kewal Krishan***



(supra), as relied upon by the learned counsel appearing for the appellant is concerned, in order to show that if a sale deed in respect of an immovable property is executed without payment of price, then it would not be a sale at all and will not effect the transfer of the immovable property. But, the same would, however, be of no use in view of the decision rendered earlier by the equal strength of the Supreme Court in the said matter of ***Dahiben's case*** (supra), wherein, it was held that non-payment of sale consideration would not be a ground for cancellation of the sale deed as in the said event, as observed herein above, the plaintiff may have other remedy to recover the same. Since, this view taken earlier was not brought to the knowledge of the equal strength of the Supreme Court in the said matter of ***Kewal Krishan*** (supra) therefore, this would not be of any use for the plaintiff.

10. Be that as it may, the plaintiff was admittedly the executant of the alleged sale, which was sought by him to be declared as null and void. Since, he was the executant of it, ad valorem court fee on the sale consideration mentioned therein was to be paid in the light of the principles laid down by the Supreme Court in the matter of ***Suhrid Singh alias Sardool Singh vs. Randhir Singh and others***, reported in ***(2010) 12 SCC 112***, wherein it has been observed that if the executant of the deed in question questioned the same, ad valorem court fee on the consideration of the said deed has to be paid by him. However, the plaintiff has failed to pay the same and during the course of the arguments, an option was given to the learned counsel for the plaintiff to deposit the requisite court fee, but, he failed to avail the same. Be that as it may, in view of the provisions prescribed under Section 7(iv)(c) of the Court Fees Act, 1860 and that by placing reliance upon the principles laid down by the Supreme Court in the above-mentioned judgment, the plaintiff



was required to pay the ad valorem court fee, but has apparently failed to deposit the requisite court fee while assailing the alleged registered deed of sale (Ex.P-4), executed on 01.07.2016. Therefore, we do not find any infirmity in the findings recorded by the trial Court so as to call for any interference in this appeal.

11. In view of the aforesaid background, the appeal being devoid of merit, is accordingly dismissed. No order as to costs.

SD/-
(Sanjay S. Agrawal)
Judge

SD/-
(Sachin Singh Rajput)
Judge

Tumane

