

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

R.S.A. No. 203 of 2005.

Reserved on: 14.07.2011.

Decided on: 29.07.2011.

Gian Chand and another.

...Appellants.

-Versus-

Charanjit Singh.

...Respondent.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, Judge.

*Whether approved for reporting?*¹No.

For the appellants. : Mr. Bimal Gupta, Advocate.

For the respondent. : Mr. Sanjeev Kuthiala, Advocate.

Rajiv Sharma, Judge:

This Regular Second Appeal is directed against the judgment and decree dated 30.03.2005, passed by the learned District Judge, Kullu, District Kullu, H.P. in Civil Appeal No. 54/04.

2. Material facts necessary for adjudication of this Regular Second Appeal, are that the respondent-plaintiff (hereinafter referred to as "the plaintiff" for convenience sake) filed a suit for permanent prohibitory injunction. The dispute between the parties is qua the land measuring 1.8 bighas (1/3 share of the total land, measuring 4.3 bighas) denoted by Khata Khatauni No. 36/41, Khasra No. 1868, as entered in Jamabandi for the years 1984-1985, situated in Phati Dhaugi, Kothi Bunga, Sub-tehsil Sainj, District Kullu.

¹ *Whether the reporters of the local papers may be allowed to see the judgment?* No.

3. Case of the plaintiff, in a nut-shell, is that one Shri Sangat Ram was the owner in possession of the land in question. Shri Sangat Ram sold the land to him for a sum of ₹3,000/- vide registered sale deed dated 25.04.1988, Ex. PW-1/A. The possession of the suit property was also handed over to him by Shri Sangat Ram. The mutation, on the basis of sale deed was also entered in his name by the Halqua Patwari. However, the same was subsequently cancelled. According to the plaintiff, in order to grab the suit property, the appellants-defendants (hereinafter referred to as “the defendants” for brevity sake) had forged a will Ex. DW-2/A, dated 21.05.1990. The defendants on the basis of the will have also got the mutations entered in their favour vide Ex.-D1. The defendants threatened to dispossess him from the suit land. It is in these circumstances, the present suit was filed by the plaintiff for restraining the defendants from interfering in his peaceful ownership and possession over the suit land in any manner.

4. The defendants contested the suit. According to him, no sale deed was ever executed by late Shri Sangat Ram on 25.04.1988, as alleged by the plaintiff. The defendants were not bound by the impugned sale deed. The sale price of ₹3,000/- was never paid by the plaintiff to Shri Sangat Ram. Shri Sangat Ram has never delivered the possession to the plaintiff. The mutation, which was entered on the basis of sale, was rightly rejected. According to the defendants, they have become owner in possession on the basis of will Ex. DW-2/A. The mutation No. 2350 has rightly been attested in their favour. They have even mortgaged the suit land with State Bank of India, Sainj.

5. The replication was filed by the plaintiff. He has reiterated the stand taken in the plaint. The issues were framed by the learned trial Court. The suit was dismissed by the trial Court on 14.06.2004. Plaintiff preferred an appeal before the learned District Judge, Kullu, District Kullu, H.P. The same was allowed on 30.03.2005. It is in these circumstances, the present Regular Second Appeal has been filed by the defendants. The present Regular Second Appeal was admitted on the following substantial questions of law on 28.07.2005:

“1. Whether the findings of the learned first appellate Court that sale consideration was received by the vendor at his residence which runs counter to the recital in the sale deed which shows that the sale consideration can be received before the Sub Registrar would proof, in view of Sections 58, 60 of the Registration Act that sale consideration in-fact was received by the vendor?

2. Whether the oral evidence relied upon by the learned first appellate Court is hit by Section 92 of the Indian Evidence Act, 1872?

3. Whether the learned first appellate Court erred in placing reliance on Section 54 of the Transfer of Property Act to hold that the sale deed Ex. PW-2/A was a valid document?”

6. Mr. Bimal Gupta, learned counsel for the appellants, on the basis of substantial questions of law framed alongwith the memorandum of appeal, has vehemently argued that since no sale consideration has been paid by the plaintiff to late Shri Sangat Ram, the sale deed is not valid. He then contended that the learned first appellate Court has erred in law by putting reliance on Section 54 of the Transfer of Property Act. He then contended

that the oral evidence led by the plaintiff is hit by Section 92 of the Indian Evidence Act, 1872. In other words, Mr. Bimal Gupta, learned counsel for the appellants has supported the judgment and decree passed by the learned trial Court.

7. Mr. Sanjeev Kuthiala, learned counsel for the respondent has supported the judgments and decree passed by the first appellate Court.

8. I have heard the learned counsel for the parties and gone through the pleadings carefully.

9. The bone of contention is sale deed dated 25.04.1988 Ex. PW-2/A. Plaintiff has appeared as PW-1. According to him, he has purchased the suit land from Sangat Ram for a consideration of ₹3,000/- vide sale deed dated 25.04.1988. He has paid the consideration to the seller at home. The sale deed was written by Shri Man Sukh at the instance of Shri Sangat Ram. The vendor signed the conveyance deed after admitting it to be true. Shri Sangat Ram has admitted before the Naib Tehsildar (Sub Registrar) that he has received the sale price. The possession was delivered to him. He has raised an apple orchard. He got the mutation attested in his favour. The mutation was got rejected by the defendants behind his back.

10. PW-2 Man Sukh has scribed the sale deed. According to him, he has scribed the sale deed and has read over the contents of the same to the executant, Shri Sangat Ram, who admitted the sale deed to be correct and then thumb marked his thumb impression in the presence of Shri Bhag Sain (PW-3) and Shri Daulat Ram. Thereafter, the sale deed was duly registered before the Sub-Registrar. He did not go to the office of Sub-

Registrar. He has no knowledge about the payment of sale consideration. In his cross-examination, he has stated that when he scribed the sale deed, the vendor and the vendee told him that the sale consideration of ₹3,000/- will be paid in front of the Sub-Registrar.

11. PW-3 Shri Bhag Sain is the marginal witness. According to him, the sale deed Ex. PW-2/A was signed by him as a marginal witness and the same was read over to the executant. However, the money did not exchange hands in his presence.

12. Defendant No. 1 Gian Chand has appeared as DW-1. According to him, Shri Sangat Ram has executed the will dated 21.05.1990 in their favour vide Ex. DW-2/A, which was registered on the same day, i.e., 21.05.1990. It was scribed by DW-2 Man Sukh and DW-3 Tule Ram was the marginal witness.

13. Shri Sangat Ram was the maternal grand father of the defendants. According to the trial Court, the payment of the sale consideration by the vendor to the vendee was highly doubtful. The trial Court has relied upon the statements of PW-2 and PW-3. The sale deed was executed on 25.04.1988 vide Ex. PW-2/A. It has been scribed by PW-2 Shri Man Sukh. He has deposed that he has read over the contents of the sale deed to the executant and thereafter, he signed the same. PW-3 Shri Bhag Sain is the marginal witness. According to PW-1, he had already paid the money to Sangat Ram two days' earlier to the date on which the sale deed was executed. It is evident from the contents of Ex. PW-2/A, dated 25.04.1988 that Sangat Ram has categorically admitted before the Sub- Registrar that he has received the money. Thereafter, the document was duly registered. Sangat Ram

has died after two years of the execution of the sale deed dated 25.04.1988. In case the money had not been paid to him, he would have filed a suit for recovery. Now, as far as the defendants are concerned, they are strangers.

14. According to Mr. Bimal Gupta, learned counsel for the appellants, there was no sale consideration and, thus, the sale deed could not be executed.

15. On the other hand, Mr. Sanjeev Kuthiala, learned counsel for the respondents has vehemently argued that in the present case, the consideration has already been paid to the vendor and he has admitted this fact before the Sub-Registrar. In the alternative, he has argued that the payment of sale consideration is not sine qua non for execution of sale deed.

16. Mr. Bimal Gupta, learned counsel for the appellants has relied upon **Smt. (Dr.) Mohini Sud** Vs. **Smt. Bimla Devi** 1999 (2) Shim. L.C. 124. The facts of this case are distinguishable. In the present case, there is ample material on record to come to the conclusion that the sale consideration had already been paid.

17. The learned Single Judge in **Chander Singh and others** Vs. **Jamuna Prasad Singh and others** AIR 1958 Patna 193 had held that a sale is complete when a sale deed is executed by the vendor and the vendor has no right in law to rescind or revoke the sale, registration or no registration.

18. Mr. Sanjeev Kuthiala, learned counsel for the respondent has relied upon **The Melur Co-operative Marketing Society** Vs. **Salia Maniam and others** AIR 1974 Madras 30, wherein the learned Single Judge has held that if the intention is that title should pass on registration, the sale is complete as soon

as the deed is registered, whether the price has been paid or not and the purchaser is entitled to sue for possession although he has not paid the price. The learned Single Judge has held as under:

“7. The principle deducible from the foregoing decisions is that payment of the price is not necessarily a sine qua non to the completion of the sale. If the intention is that the property should pass on registration, the sale is complete as soon as the deed is registered, whether the price has been paid or not. Then the purchaser is entitled to sue for possession, although he has not paid the price. This would follow from the words of Section 54 “price paid or promised or part paid, the seller on that account cannot repudiate the sale and his only remedy is to sue for the price or the balance of the price unpaid. Applying this principle, it would follow from the terms of Ex. A-1 in the instant case that the intention of the parties was that title should pass to the plaintiff, though it was one of the terms of the contract that the balance of sale consideration, namely, Rs.1900 should be paid by the plaintiff to the vendor at the time of the registration of the sale deed. But such payment is not a condition precedent for the passing of title as would be seen from a reading of all the recitals. Mr. Gopalaratnam contended that the intention of the parties should be gathered not only from the terms of sale deed but also from the subsequent conduct, and he referred to the notice Ex. B-1 issued by the first defendant to the plaintiff on 16.5.1955 in which she stated that the sale should be completed within a week from the date of the execution of the sale deed by paying the balance of consideration. He submitted that the lower appellate Court failed to take note of this circumstance. I do not think that this criticism is justified. The lower appellate Court has considered

the terms of Ex. A-1 in the first instance and observed that from the terms it is clear that the intention was that the passing of title did not depend upon the payment of entire consideration. An argument appears to have been advanced before the lower appellate Court that the subsequent conduct of the parties should also be considered. In dealing with that aspect, the lower appellate Court has referred to the notice Ex. B-1 in paragraph 6 of its judgment and ultimately held that title did pass to the plaintiff on the execution of the sale deed. It may also be noted in this connection that the case, as put forward in Ex. B-1, namely, that the agreement was that the sale should be completed within a week after execution by payment of the balance of the consideration, does not find a place in the cancellation deed (E. B-7). No evidence was also let in that respect. When the terms of Ex. A-1 are clear, it is not permissible to go beyond the terms thereof to find out the intention of the parties. As already pointed out by me, the terms do not warrant the conclusion that the payment of entire consideration was a condition precedent for the passing of title. The lower appellate Court was, therefore, right in holding that title passed notwithstanding the fact that the plaintiff did not pay Rs.1900. which he agreed to pay before the Sub-Registrar.”

19. The learned Single Judge in **Harbans Singh Vs. Smt. Tekamani Devi and others** AIR 1990 Patna 26 has held that passing of title in property depends on intention of parties. According to the learned Single Judge whether a title passed to the vendee, even if the consideration amount or a part thereof has not been paid depends upon the intention of the parties.

According to him, such an intention has to be gathered primarily from the recitals made in the deed of sale as also circumstances surrounding thereto. According to him, in terms of Section 54 a sale may become incomplete, although the consideration amount or a part thereof has not been paid, but promised to be paid.

20. The learned Single Judge in **Dulana Dei alias Dolena Dei Vs. Balaram Sahu and two others** AIR 1993 Orissa 59 has held that when a sale deed of immovable property is executed and registered, there is a 'prima facie' transfer of title to the vendee. The mere non-payment of consideration will not arrest the passing of title, as the sale of immovable property may be effected in exchange for the price paid or promised to be paid. The learned Single Judge has held as under:

“11. In this case the English rendition of the sale deed may be noted which is as follows:-

“Having sold the scheduled land on receipt of Rs.3,000/- we have conferred possession and title on the vendee with effect from today after divesting ourselves.”

This recital in the sale deed admits of no doubt that the defendants 1 and 2 had intended to transfer the title in favour of the vendee on the very date of execution of the registered sale deed. That being so, title to the suit land having passed to the mother of the plaintiff on the date of execution of the registered sale deed, Ext. 1, the finding of the appellate Court that non-

passing of consideration there was no passing of title cannot be accepted. It follows, therefore, that the suit could not have been dismissed for want of title of the plaintiff.”

21. The learned Single Judge in **Basanti Mohanty Vs. Brahmanand Das and others** AIR 1996 Orissa 86 has held that when there is unambiguous intention of parties indicating passing of title on execution of deed, non-passing of consideration, cannot invalidate sale. The learned Single Judge has held as under:

“6. Section 54 of the Transfer of Property Act, 1882 (in short, the ‘Act’) is a part of Chapter III dealing with sale of immoveable property. ‘Sale’ is defined as being a transfer of ownership for a price. In a sale there is an absolute transfer of all rights in the property sold. No rights are left in the transferor. The essential elements of a sale are (i) the parties; (ii) the subject-matter; (iii) the transfer or conveyance; and (iv) the price or consideration. The word ‘price’ is used in its ordinary sense as meaning money only. It is used in the same sense as in Section 77 of the Indian Contract Act, 1872 (in short, the ‘Contract Act’). As has been observed by the Supreme Court in Commissioner of Income-tax V. Motor and General Stores (P.) Ltd., AIR 1967 SC 200 (sic), though ‘price’ is not defined in the Act, it is used in the same sense as in the Sale of Goods Act, 1930 (in short, the ‘Sale Act’), and means the money consideration for the sale of goods. The presence of a money consideration is an essential element in a transaction of sale. Price is the essence of a contract for sale, and unless price is fixed, there is no enforceable contract, because if no price is named law does not imply, as in the case of a sale of goods, a contract to buy at a reasonable price.

In all sales, it is evident that price is an essential ingredient and that where it is neither ascertained nor rendered ascertainable the contract is void for incompleteness, and incapable of enforcement. If the consideration is not money, but some other valuable consideration, it may be an exchange or barter, but not a sale. The payment of price is not necessarily a sine qua non to the completion of the sale. If the intention is that property should pass on registration, the sale is complete as soon as the deed is registered, whether the price has been paid or not, and the purchaser is entitled to sue for possession although he has not paid the price. This is clear from the words of section, 'price paid or promised or part paid or part promised'. If the price is not paid the seller cannot on that account set aside the conveyance. We can only sue for the price, and he will have a charge on the property for the unpaid purchase-money. This is a non-possessory charge in terms of Section 55(4)(b) of the Act.

7. The factual position needs reference for application of the legal position, Muralidhar Mohanty (D.W. 4) is the husband of defendant No. 1. From his evidence it is revealed that on 7.6.1982 his wife defendant No. 1 sold the land to plaintiffs. At 7 p.m. that day they returned home from the Sub-Registrar's office. On 9.6.1982 they purchased stamp paper for execution of a deed of cancellation of the above sale deed. Later, on 10.6.1982 the sale deed dated 7.6.1982 was cancelled by defendant No. 1, vide Ext. 2 and the sale deed transferring the disputed properties in favour of defendant No. 2 was executed and registered by her on the same day under Ext. A. There was actually a gap of one day from the date of execution of registration of the sale deed (Ext. 2), and purchase of stamp paper for cancelling the same deed of conveyance. Intention of the parties as to whether

title to a particular property would pass only on payment of the consideration amount or it will pass independent of payment of the consideration amount has to be inferred from the recitals of the document itself. When the recitals of the document are clear and unambiguous on the point of passing of title and payment of consideration, the sole criterion to gather intention of the parties is to depend on the recitals of the document itself. Where there is ambiguity and uncertainty as to the terms of the agreement between the parties concerning their intention, conduct of the parties, surrounding circumstances attending the case and evidence adduced on both sides have to be taken into consideration. As observed by this Court in *Ramchandra Bihari Lal Firm V. Mathuramohan Naik*, AIR 1964 Ori 239; *Gurubari Lenka V. Dulani Thakurani*, AIR 1971 Orissa 147; and *Umakanta Das V. Pradip Kumar Ray*, AIR 1986 Orissa 196^③1986) 61 Cal LT 480, if the term in the sale deed is not ambiguous, then an external aid to find out the true intention of the parties cannot be availed of and the narration in the document would be the sole determining feature. If the intention of the parties is clear as found from the recitals, passing of title is in presenti and not kept in abeyance till full payment of consideration. The recitals regarding passing of title, and payment of consideration vide Ext. 2 reads as follows:

“Today of my free-will the scheduled properties are sold and the consideration money will be received after registration at the time of endorsement of registration ticket, and the vendees have been delivered possession and the title has been passed to them as owners. The vendees and their successors in interest would enjoy the property as owners in possession

thereof, and get their names mutated in the Revenue records.”

The recital in the sale deed is clear and there is no ambiguity. Therefore, there is no question of any external aid being taken to find out true intention of parties. The translated terms as referred to above, unequivocally indicate that title passed on execution of the deed, and was not dependent upon passing of consideration. The plaintiffs were put in possession of the suit land, after execution of the sale deed (Ext.2), and title also passed. The conclusions of the learned trial Judge are irreversible.”

22. The Apex Court in Vidhyadhar Vs. Mankikrao and another, AIR 1999 Supreme Court 1441 has held that the payment of whole price at the time of execution of sale deed is not sine qua non to completion of sale. Their Lordships have held as under:

35. The definition indicates that in order to constitute a sale, there must be a transfer of ownership from one person to another, i.e., transfer of all rights and interests in the properties which are possessed by that person are transferred by him to another person. The transferor cannot retain any part of his interest or right in that property or else it would not be a sale. The definition further says that the transfer of ownership has to be for a "price paid or promised or part-paid and part-promised." Price thus constitutes an essential ingredient of the transaction of sale. The words "price paid or promised or part-paid and part-promised" indicate that actual payment of whole of the price at the time of the execution of sale deed is not a sine qua non to the completion of the

sale. Even if the whole of the price is not paid but the document is executed and thereafter registered, if the property is of the value of more than Rs. 100/-. the sale would be complete.

36. There is a catena of decisions of various High Courts in which it has been held that even if the whole of the price is not paid, the transaction of sale will take effect and the title would pass under that transaction. To cite only a few, in *Gayatri Prasad v. Board of Revenue*, 1973 All LJ 412, it was held that non-payment of a portion of the sale price would not effect validity of sale. It was observed that part payment of consideration by vendee itself proved the intention to pay the remaining amount of sale price. To the same effect is the decision of the Madhya Pradesh High Court in *Sukaloo v. Punau*, AIR 1961 Madh Pra 176 : ILR (1960) MP 614.

38. Applying these principles to the instant case, it will be seen that defendant No. 2 executed a sale deed in favour of the plaintiff, presented it for registration, admitted its execution before the Sub-Registrar before whom remaining part of the sale consideration was paid and, thereafter, the document was registered. The additional circumstances are that when the plaintiff instituted a suit on the basis of his title based on the aforesaid sale deed, defendant No. 2, who was the vendor, admitted in his written statement, the whole case set out by the plaintiff and further admitted in the witness box that he had executed a sale deed in favour of the plaintiff and had also received full amount of consideration. These facts clearly establish that a complete and formidable sale deed was executed by defendant No. 2 in favour of the plaintiff and the title in the property passed to

plaintiff. The findings recorded by the High Court on this question cannot, therefore, be upheld.

39. The judgment of the High Court on this point is also erroneous for the reason that it totally ignored the provisions contained in Section 55 (4) (b) of the Transfer of Property Act which are set out below:-

"55. In the absence of a contract to the contrary the buyer and seller of immovable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following, or such of them as are applicable to the property sold:

(1) to (3)

(4) The seller is entitled-

(a)
.

(b) Where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer, any transferee without consideration or any transferee with notice of non-payment, for the amount of the purchase-money, or any part thereof remaining unpaid, and for interest on such amount or part from the date on which possession has been delivered.

(5) to (6)

42. In view of the above, the High Court was wholly in error in coming to the conclusion that there was no sale as only a sum of Rs. 500/- was paid to defendant No. 2 and the balance amount of Rs. 4,500/- was not paid. Since the title in the property had already passed, even if the balance amount of sale price was not paid, the sale would not become invalid. The property sold would stand transferred to the buyer subject to the statutory charge for the unpaid part of the sale price.

23. Their Lordships of the Hon'ble Supreme Court in **Vimal Chand Ghevarchand Jain and others** Vs. **Ramakant Eknath Jadoo** 2009 5 Supreme Court Cases 713 have held that a registered deed of sale carries presumption that the transaction was a genuine one. Their Lordships have further held that when the true character of a document is questioned, extrinsic evidence by way of oral evidence is admissible. Their Lordships have held as under:

“19. The deed of sale dated 29.6.1978 was a registered one. It, therefore, carries a presumption that the transaction was a genuine one. Respondent was the son of the vendor. He was an attesting witness. In his written statement, he categorically denied execution of the said deed of sale. He also denied that he had attested the document. He even did not examine himself before the learned Trial Judge. His witnesses merely proved his possession. The fact that the respondent's father was put in possession with effect from 1.7.1978 was in dispute. What was in dispute was the character of his possession. Did he continue to possess the godown as owner thereof or on the basis of leave and licence was the question, which was not considered in its proper perspective by any of the three courts below.

31. Indisputably when a true character of a document is questioned, extrinsic evidence by way of oral evidence is admissible. {See R. Janakiraman Vs. State Rep. by Inspector of Police, CBI, SPE, Madras (2006) 1 SCC 697 para 24]; Roop Kumar Vs. Mohan Thedani [(2003) 6 SCC 595, para 19]; and State Bank of India & Anr. Vs. Mula Sahakari Sakhar Karkhana Ltd. [(2006) 6 SCC 293 paras 23 to 32]}. We would, therefore, proceed on the premise

that it was open to the respondent to adduce oral evidence in regard to the nature of the document. But, in our opinion, he did not discharge the burden of proof in respect thereof which was on him. The document in question was not only a registered one but also the title deeds in respect of the properties have also been handed over. Symbolical possession if not actual physical possession, thus, must be held to have been handed over. It was acted upon. Appellants started paying rent in respect of the said property. No objection thereto has been raised by the respondent.

24. Their Lordships of the Hon'ble Supreme Court in **Suraj Lamp and Industries Private Limited through Director Vs. State of Haryana and another** (2009) 7 Supreme Court Cases 363 have explained the purpose and benefits of registration of conveyance of immovable property. Their Lordships have held that registration ensures that every person dealing with immovable property can rely with confidence on statements contained in registers maintained under the Act. Their Lordships have held as under:

15. The Registration Act, 1908, was enacted with the intention of providing orderliness, discipline and public notice in regard to transactions relating to immovable property and protection from fraud and forgery of documents of transfer. This is achieved by requiring compulsory registration of certain types of documents and providing for consequences of non-registration.

18. Registration of a document gives notice to the world that such a document has been executed. Registration provides safety and security to transactions relating to immovable property, even

if the document is lost or destroyed. It gives publicity and public exposure to documents thereby preventing forgeries and frauds in regard to transactions and execution of documents. Registration provides information to people who may deal with a property, as to the nature and extent of the rights which persons may have, affecting that property. In other words, it enables people to find out whether any particular property with which they are concerned, has been subjected to any legal obligation or liability and who is or are the person/s presently having right, title, and interest in the property. It gives so Latinity of form and perpetuate documents which are of legal importance or relevance by recording them, where people may see the record and enquire and ascertain what the particulars are and as far as land is concerned what obligations exist with regard to them. It ensures that every person dealing with immovable property can rely with confidence upon the statements contained in the registers (maintained under the said Act) as a full and complete account of all transactions by which the title to the property may be affected and secure extracts/copies duly certified.”

25. Similarly, the learned Single Judge of Punjab and Haryana High Court in **Balbir Singh and others** Vs. **Rajinder Singh and others** 2004(2) S.L.J. 1102 has held as under:

“5. To prove the execution of the sale deed, it has been found by the first appellate Court that Inder Singh survived two years after the execution of the sale deed and he did not raise a little finger during his life time despite the sale deed executed by him. On the basis of the testimony of the attesting witness and scribe DW 2 Fiji Chummier, it was found that the sale deed Exhibit D2 has been executed by Inder Singh.

7. It has been so found by the Courts below that the land sold by Inder Singh was his self-acquired property. The fact that the land was self-acquired property cannot be disputed by the learned counsel for the appellants. Once the sale is for consideration, irrespective of its adequacy or inadequacy, it is not open to the plaintiff to dispute the inadequacy of the consideration, if any. It has been found that the appellants have not given any details of fraud in terms of Order 6 rule 4 of the Code of Civil Procedure wherein parties relying on misrepresentation, fraud, breach of trust, willful default or undue influence ought to plead with details thereof. The deceased died in 1978 i.e. after two years of the execution of the sale deed. The sale was not disputed during all this period. IN Vidhyadhar Vs. Mankikrao and another AIR 1999 Supreme Court 1441, the Hon'ble Supreme Court has held that once the document is executed and registered, the sale is complete. Para 35 of the said judgment reads as under:-

“The definition indicates that in order to constitute a sale, there must be a transfer of ownership from one person to another i.e., transfer of all rights and interests in the properties which are possessed by that person are transferred by him to another person. The transferor cannot retain any part of his interest or right in that property or else it would not be a sale. The definition further says that the transfer of ownership has to be for a price paid or promised or part-paid and part-promised.” Price thus constitutes an essential ingredient of the transaction of sale. The words “price paid or promised or part-paid or part-promised” indicate that actual payment of whole of the price at the time of the execution of sale deed is

not a sine qua non to the completion of the sale. Even if the whole of the price is not paid but the document is executed and thereafter registered, if the property is of the value of more than Rs.100/-, the sale would be complete.”

26. The learned Single Judge of Punjab and Haryana High Court in **Jarnail Singh** Vs. **Gurmail Singh and others** 2004 (2) S.L.J. 1409 has held that when no grievance was made by the vendor in respect of non-receipt of consideration, it was not open to the defendant, who was stranger to the sale deed to claim that the sale deed was without any consideration or was invalid in any other manner. The learned Single Judge has held as under:

“11. Coming to the merits of the controversy, the first question which would arise for consideration is as to whether the sale deed Ex. P1 was a legal and valid document and as to whether the said sale deed conveyed a valid title in favour of the plaintiffs.

12. The learned first appellate Court has rightly observed that the said sale deed was executed on September 3, 1973 by Parampal Singh acting as a attorney of Harnam Kaur. Harnam Kaur died on April 20, 1975. During her life time, Harnam Kaur never challenged the aforesaid sale deed executed by her attorney. No grievance was ever made by her with regard to the non-receipt of the consideration. Thus, when Harnam Kaur had never made any grievance with regard to the validity of the aforesaid sale deed then it is definitely not open to defendant, Jarnail Singh, who is stranger to the said sale deed to claim that the said sale deed was without any consideration or was invalid in any other manner. As a matter of fact, no meaningful argument has been addressed by the learned counsel appearing of the defendant-

appellant to show that the said sale deed suffers from any infirmity.

27. In the instant case, the vendor has remained alive for a period of two years after the execution of sale deed, dated 25.04.1988. He has never assailed the validity of sale deed. Thus, it was not open to the defendants to take the plea that the sale deed was not validly executed since the consideration was not paid.

28. Accordingly, in view of the observations and discussions made hereinabove, there is no merit in this Regular Second Appeal and the same is dismissed, so also the pending application(s), if any. No costs.

(Rajiv Sharma)
Judge

July 29, 2011.
(bhupender)

