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MA-7272-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PAVAN KUMAR DWIVEDI

ON THE 9th OF SEPTEMBER, 2025MISC. APPEAL No. 7272 of 2024*AANANDILAL AND OTHERS**Versus**GRACELAND HABITATS SERENE PRIVATE LIMITED AND OTHERS*

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Appearance:

Shri Vishal Baheti, learned Senior Advocate assisted by Shri Satyajeet Mane, learned counsel for the appellants.

Shri Ajay Bagadiya, learned Senior Advocate assisted by Shri Gajendra Singh Chouhan, learned counsel for respondent No.1.

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ORDER

The appellants have filed this appeal under Order XLIII Rule 1(r) of CPC being aggrieved by the order dated 06.08.2024 passed by the learned III District Judge, Indore in Regular Civil Suit No.576-A/2024, whereby the application filed by the appellants/plaintiffs under Order XXXIX Rule 1 and 2 of the CPC has been rejected.

2. The relevant facts of the case are that the appellants/plaintiffs were the owners, title holders and in possession of ancestral agricultural land (for short suit property), the details of which are mentioned in para 5.1 of the present appeal. The suit property is situated in Village Dhannad, Tehsil Rau, District Indore.

2.1 Three sale deeds in respect to the suit property were executed by



the appellants in favour of respondent No.1 on 26.05.2022.

2.2 After the execution of the sale deeds, a dispute arose between the appellants/plaintiffs and respondent/defendant No.1. Consequently, Civil Suit No.576-A/2020 was filed by the appellants before the learned trial Court. Along with the plaint, an application under Order XXXIX Rule 1 and 2 of the CPC was also filed.

2.3 In the plaint as well as application filed under Order XXXIX Rule 1 and 2, it was averred that the sale deeds were got executed fraudulently; that there was no valid transaction between the appellants and respondent No.1; and that the appellants are still in possession of the suit property.

3. Respondent No.2 filed a reply to the application under Order XXXIX Rule 1 and 2 of the CPC thereby denying the claim of the appellants. The learned trial Court, after considering the rival submissions and the material available on record, passed the impugned order dated 06.08.2024, thereby rejecting the application filed by the appellants.

4. The learned counsel for the appellants submits that the appellants/plaintiffs are the owners of land situated in 19 survey numbers, as mentioned in para 5.1 of the present appeal, admeasuring a total of 11.629 hectares, which constitutes the suit property in the present dispute.

4.1 It is submitted that all the plaintiffs are close relatives of each other and the suit property is ancestral in nature. They are all engaged in agricultural activities on the suit property. It has also been stated that respondent No.2 is the son of appellant No.3.

4.2 Respondent No.1, in collusion with respondent No.3, falsely



represented to the appellants that respondent No.2 was the authorized signatory of respondent No.1/Company and thereby induced the appellants to execute three registered sale deeds in favour of respondent No.1 Company on 26.05.2022, 8.07.2022 and 20.07.2022.

4.3 It has been stated that appellants never intended to alienate the suit property in favour of respondent No.1 Company. However, the respondents have fraudulently prepared sale deeds of the suit property and further got the suit property mutated in their name. Moreover, the entire sale consideration has not been paid by respondent No.1. The respondents have now also instituted proceedings under Section 250 of the Madhya Pradesh Land Revenue Code before the concerned Revenue Authority.

4.4 In the back drop of above facts and pleadings, the learned counsel, by referring to Annexure P-8, submits that the documents annexed are electricity bills pertaining to the suit property as well as Krishi Upaj Mandi receipts. The document at Annexure P-9 is a certificate issued by the Gram Panchayat, certifying that the appellants are still in possession of the suit property.

4.5 Thus, he submits that once it is established that the appellants are still in possession of the suit property, their possession ought to have been protected by the learned trial Court during the pendency of the suit.

4.6 He further points out that, in para 15 of the impugned order the learned trial Court has recorded perverse findings. It was never admitted or stated by the plaintiffs that they had executed sale deeds in favour of defendant No.1. In fact, what was stated is that the sale deeds were executed



by the plaintiffs in favour of respondent No.1 under deceit and misrepresentation by the defendants, they pretended that the sale deeds were being executed in favour of defendant no. 2 but in the documents name of defendant no. 1 was mentioned, plaintiffs/appellants being illiterate could not understand this. Thus, the learned trial Court has misconstrued the averments made in the plaint.

4.7 It has further been stated that the order passed by the SDO regarding the mutation of the name of respondent No.1 Company in respect of the land in question is itself under challenge before the learned trial Court. Relief in clause (c) of the plaint pertains to the said order. However, while considering the application filed by the appellants, the learned trial Court has erroneously relied upon that very order to reject the application of the appellants.

4.8 In support of his submissions, learned counsel placed reliance on the following judgments of the Hon'ble Apex Court and this Court :

- (i) *Rame Gowda vs. M. Varadappa Naidu* in (2004) 1 SCC 769.
- (ii) *Ramakant Ambalal Choksi vs. Harish Ambalal Choksi and Others* in (2024) 11 SCC 351.
- (iii) *Hindustan Petroleum Corporation Ltd. vs. Sriman Narayan and Another* in (2002) 5 SCC 760.
- (iv) *Suraj Singh vs. Manoj Kumar Gupta and Others* in 2025 SCC OnLine Cal 956.
- (v) *Rachi Devi vs. Anil Kumar and Others* in 2025 SCC OnLine MP 282.



(vi) *Bharta Rathore Patliya vs. Gaja Rathore Patliya* in 2023 SCC OnLine MP 7128.

5. Per contra, learned counsel for respondent No.1, by referring to the sale deeds (Annexure P-3), points out that the recitals in the sale deeds themselves mention the delivery of possession. He submits that there is legal presumption regarding the validity of registered document. As such, once possession was delivered at the time of execution of the sale deed, there is no question of protecting the possession of the plaintiffs, as respondent No.1 is now in possession of the suit property.

5.1 He further refers to the averments in the plaint and submits that the plaintiffs have, admitted their signatures on the sale deeds. Thus, *prima facie*, it is established that the sale deeds were executed and as the recitals mention the delivery of possession, the question of protecting the possession of the plaintiffs does not arise.

5.2 He further submits that the cheques mentioned in the plaint are not connected in any way with the sale transactions. He submits that the sale deeds clearly state that the entire sale consideration was received.

5.3 Learned counsel then refers to Annexure P-4 filed with the appeal and submits that the plaintiffs themselves filed an application before the revenue authorities stating that they had entered into a compromise with respondent No.1 and accordingly, they withdrew their objection regarding the mutation of respondent No.1's name.

5.4 He further relies on Annexures P-4 and P-5 and submits that, on a bare perusal of the same, it is evident that the appellants/plaintiffs acted



with *mala fide* intent and are now attempting to blackmail respondent No.1 company only for the reason that there is escalation in the prices of the suit property.

5.5 He further points out that Annexure P-10 is the order passed by the competent authority for mutating the name of respondent No.1. He submits that the said order has attained finality, as it has not been challenged by way of an appeal by the appellants.

5.6 He then refers to the findings recorded by the learned trial Court in paras 17 and 18 of the impugned order and submits that the challenge to the execution of the sale deed has been made after a lapse of two years from the date of execution. He contends that possession was delivered as stated in the recitals of the sale deed and the entire sale consideration was paid as also mentioned in the deeds of sale. As such, he submits that no interference is warranted with the impugned order.

6. Heard learned counsel for the respective parties and perused the record.

7. From the pleadings in the plaint, it is very clear that though the appellants have pleaded that the sale deeds were executed due to deceit by defendant No.1 in connivance with defendant No.3, however the plaint repeatedly reflects that the signatures on the sale deeds are impliedly admitted repeatedly. On perusal of the recitals in the sale deeds, the delivery of possession is also evident. It is thus clear that on the date of execution, possession was stated to have been delivered by the appellants/plaintiffs to respondent/defendant No.1.



7.1 Very interestingly, on one hand, a plea has been raised in the plaint that the sale deeds were executed by the plaintiffs under fraud played upon them; on the other hand, it has also been pleaded that the full sale consideration was not paid. Two inconsistent and contradictory pleas have been taken: (i) that the sale deeds were executed under fraud, and (ii) that the cheques given as sale consideration were dishonoured.

7.2 In para 7 of the plaint, it is specifically stated that some of the cheques deposited in the bank were dishonoured. As such, two inconsistent and contradictory pleas have been taken.

8. On one hand, the appellants allege that the execution of the sale deed was achieved by playing fraud and on the other hand, they also plead that the full sale consideration was not paid. If the execution of sale deeds itself was based on fraud then there was no question of incomplete payment of the sale consideration for such deeds of sale which were never intended to be real transactions but only a sham for saving the property from some other litigation which was going on separately. The plaintiffs themselves pleaded that they were made to believe that sale deeds were being executed in favour of defendant no. 2 who is the son of plaintiff no. 3 only to save the land, however in place of his name, defendant no. 1 was mentioned, as it can be seen, there is no scope of payment in this story, if this story were to be believed then it was only a cosmetic transaction in which there could not have been any question of sale consideration. As such, how the question of incomplete payment of sale consideration arose. This makes the entire story of the appellants vulnerable, resulting into lack of *prima facie* case.



8.1 The appellants' story in the plaint is that the plaintiffs were made to execute sale deeds in favour of Shekhar Choudhary (i.e. defendant No.2), which would remain with him and that respondent No.1 would not take possession of the property. It is further pleaded that this sale was without any sale consideration. All of this has been stated in para 10 of the plaint.

8.2 It is thus clear that the pleadings have utterly failed to make out a *prima facie* case. The learned trial Court has considered all these aspects in detail. In view of these facts, the submission of the learned counsel for the appellants that the learned trial Court has recorded perverse findings in para 15 of the impugned order holds no water. In fact, the learned trial Court, after a thorough scrutiny of the averments in the plaint, has rightly recorded this finding.

9. As regards the submission of the learned counsel for the appellants that they possess electricity bills, receipts from the Krishi Upaj Mandi, Indore and a certificate issued by the Gram Panchayat, Bhagoda, it must be noted that none of these documents can be considered clinching evidence of possession of the appellants.

9.1 Only two electricity bills in the name of Anandilal Ambalal Seth have been placed on record. If the electricity connection continued in the same name even after the sale, then bills could still be issued in the name of the previous owner. Therefore, the electricity bill by itself cannot constitute conclusive proof of possession.

10. Regarding the receipt from the Krishi Upaj Mandi, Indore, these are merely receipts of the sale of agricultural produce/food grains and cannot



be treated as documents evidencing possession of the disputed property.

11. As for the certificate issued by the Gram Panchayat, it has been issued by the Sarpanch, which is not unusual, given that the appellants are residents of the village falling under the jurisdiction of that Gram Panchayat. However, when this certificate is placed in juxtaposition with the recital in the registered sale deeds, where the appellants themselves have acknowledged delivery of possession to respondent/defendant No.1, it becomes clear that the certificate holds little evidentiary value in establishing contrary possession. In light of these facts, it cannot be said that the learned trial Court has recorded perverse findings.

12. As regards the case laws relied upon by the appellants, the facts of those cases are different. In fact, in the case of *Ramakant Ambalal Choksi (Supra)*, the Hon'ble Apex Court considered the scope of interference in an appeal under Order XLIII Rule 1 of the CPC in the following words :

"20. The law in relation to the scope of an appeal against grant or non-grant of interim injunction was laid down by this Court in Wander Ltd. v. Antox India P. Ltd. reported in 1990 Supp SCC 727. Antox brought an action of passing off against Wander with respect to the mark Cal-De-Ce. The trial court declined Antox's plea for an interim injunction, however, on appeal the High Court reversed the findings of the trial judge. This Court, upon due consideration of the matter, took notice of two egregious errors said to have been committed by the High Court :

a. First, as regards the scope and nature of the appeals before it and the limitations on the powers of the appellate court to substitute its own discretion in an appeal preferred against a discretionary order; and b. Secondly, the weakness in ratiocination as to the quality of Antox's alleged user of the trademark on which the passing off action is founded.

21. With regards to (a), this Court held thus:

"14. In such appeals, the appellate court will not



interfere with the exercise of discretion of the court of the first instance and substitute its own discretion, except where the discretion has been shown to have been exercised arbitrarily or capriciously or perversely, or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions ... the appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below ... If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion.

30. This Court in Monsanto Technology LLC v. Nuziveedu Seeds Ltd. reported in (2019) 3 SCC 381, observed that the appellate court should not usurp the jurisdiction of the Single Judge to decide as to whether the tests of prima facie case, balance of convenience and irreparable injury are made out in the case or not.

31. The appellate court in an appeal from an interlocutory order granting or declining to grant interim injunction is only required to adjudicate the validity of such order applying the well settled principles governing the scope of jurisdiction of appellate court under Order 43 of the CPC which have been reiterated in various other decisions of this Court. The appellate court should not assume unlimited jurisdiction and should guide its powers within the contours laid down in the Wander (supra) case."
Principle governing grant of temporary injunction

13. As regards the contention of the appellants regarding non-payment of full consideration, this issue was considered by the Hon'ble Apex Court in the case of *Dahi Ben vs. Arvinbhai Kalyanji Bhanusali (Gajra) (D) Thr. LRs. & Ors.* in *Civil Appeal No.9519/2019* arising out of *SLP (Civil) No.11618/2017*. After considering the aspect of partial payment, the Hon'ble Apex Court held in paras 15.2 and 15.3 as under :

"15.2 If the case made out in the Complaint is to be believed, it would mean that almost 99% of the sale consideration i.e. Rs.1,73,62,000 allegedly remained unpaid throughout. It is, however inconceivable that if the payments had remained unpaid, the Plaintiffs would have remained completely silent



for a period of over 5 and ½ years, without even issuing a legal notice for payment of the unpaid sale consideration, or instituting any proceeding for recovery of the amount, till the filing of the present suit in December 2014.

15.3 The Plaintiffs have made out a case of alleged non-payment of a part of the sale consideration in the Plaint, and prayed for the relief of cancellation of the Sale Deed on this ground.

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.

In Vidyadhar v. Manikrao & Anr.¹⁴ 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.

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 the 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 VII Rule 11 (a)."

14. As such, partial payment in the peculiar facts of the present case cannot be a ground for entertaining the present appeal. Particularly when the recital of the sale deed itself provided that the entire sale consideration has been received by the sellers of the land.

15. In view of the above, this Court does not find any infirmity in the order passed by the learned Trial Court rejecting the application filed by the appellants under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure. Thus interference in the exercise of discretion by the learned Trial Court is hereby declined.

16. Consequently, the present appeal is dismissed.

No order as to costs.

Certified copy as per rules.

(PAVAN KUMAR DWIVEDI)
JUDGE