



**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 14th OF OCTOBER, 2024

MISC. PETITION No. 2267 of 2024

MUKESH KUMAR RAI AND OTHERS

Versus

MOHD. SAFIQ QURESHI DEAD THROUGH LRS. MOHD. AMIR

AND OTHERS

Appearance:

Shri Ashish Shroti – Advocate for petitioners.

Shri Abhijit Bhowmik – Advocate for caveator.

ORDER

This petition under Article 227 of the Constitution of India has been filed seeking the following reliefs:-

- i. That, the Hon'ble court may kindly be issue writ of certiorari concern respondent authority to set-aside the order impugned dated 08/01/2023 (Annexure-P-6) passed by Upper Commissioner, with holding that the revenue authority can't denied for mutation u/s 109-110 of MPLRC in revenue record when sale deed is in existence and has not declared null and void by competent court, in the interest of justice.
 - ii. Any other relief which Hon'ble court may find fit may grant in favor of petitioner, in the interest of justice.
2. It is submitted by counsel for petitioners that petitioners had purchased 2400 sqft of land forming part of Khasra No.408/1 for a consideration amount of Rs.1,17,76,000/-. On the basis of said sale



deed, petitioners moved an application for mutation of their names, which was allowed by Tahsildar Bina, District Sagar by order dated 13/2/2020 passed in case No.1548/A-6/2019-20. Being aggrieved by the said order, respondents preferred an appeal, which was registered as Appeal No.37/Appeal/2021-22 and by order dated 4/10/2023 the SDO (Revenue), Bina, District Sagar dismissed said appeal. It is submitted by counsel for petitioners that on a further challenge by respondents, the Additional Commissioner, Sagar Division, Sagar by order dated 8/1/2024 passed in case No.0807/Appeal/2023-24 has allowed the appeal by holding that a civil suit has been filed by father of respondents, which has been registered as Civil Suit No.RCS12/2020 and further, the mutation was done without giving an opportunity of hearing to all the necessary parties including respondents.

3. Challenging the order passed by the Additional Commissioner, Sagar Division, Sagar it is submitted by counsel for petitioners that the civil suit was not filed by the father of respondents, but it has been filed by one Noorbano, who claims herself to be a co-sharer in the entire property including the property which is the subject matter of the sale deed. It is further submitted by counsel for the petitioners that (i) whether the sale-deed was rightly executed or not, is beyond the purview of mutation proceedings and (ii) once there is recital in the sale-deed that entire consideration amount has been paid, then whether the consideration amount was paid or not, cannot be a ground for setting aside sale-deed and to buttress his contentions, counsel for petitioners has relied upon a judgment passed by the Supreme Court in the case of **Dahiben v. Arvindbhai Kalyanji Bhanusali (Gajra) Dead Through Legal Representatives and others** reported in (2020) 7 SCC 366.



4. Heard learned counsel for petitioners.
5. Coordinate Bench of this Court by order dated 23/7/2024 had passed the following order:-

After arguments at length, learned counsel for the petitioners prays for time to produce copy of statement of Bank account showing payment of sale consideration mentioned in the sale deed.

As prayed, list on 30.07.2024.

In the meantime, effect and operation of order dated 08.01.2024 passed by Additional Commissioner shall remain stayed, till the next date of listing.

6. In response to the said order, it is submitted by counsel for petitioners that out of total consideration amount of Rs.1,17,76,000/-, a total amount of Rs.3,00,000/- has been paid. Although cheques were issued in respect of remaining amount, which are mentioned in the sale deed, but they were never presented by respondents in the Bank. It is further submitted that later on petitioners have paid the entire consideration amount in cash.
7. *Per contra*, petition is vehemently opposed by counsel for respondents. It is submitted that no amount in cash has been paid by the petitioners. Even otherwise, as per provisions of Sections 269SS and 269T of the Income Tax Act, amount in excess of Rs.20,000/- cannot be paid in cash. In fact, nothing in cash has been paid.
8. Considered the submissions made by learned counsel for the parties.
9. The Supreme Court in the case of **Dahiben (supra)** has held as under:-



“29.2. The case made out in the plaint is that even though they had executed the registered sale deed dated 2-7-2009 for a sale consideration of Rs 1,74,02,000, an amount of only Rs 40,000 was paid to them. The remaining 31 cheques mentioned in the sale deed, which covered the balance amount of Rs 1,73,62,000 were alleged to be “bogus” or “false”, and allegedly remained unpaid. We find the averments in the plaint completely contrary to the recitals in the sale deed dated 2-7-2009, which was admittedly executed by the plaintiffs in favour of Respondent 1. In the sale deed, the plaintiffs have expressly and unequivocally acknowledged that the entire sale consideration was “paid” by Defendant 1-Respondent 1 herein to the plaintiffs.

* * *

29.5. If the case made out in the plaint 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 five-and-half 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.

* * *

29.8. In *Vidhyadhar v. Manikrao*, (1999) 3 SCC 573 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.

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 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 7 Rule 11(a).”

10. So far as facts of the present case are concerned, the same are distinguishable for the reason that it is the case of petitioners themselves that out of total consideration amount of Rs.1,17,76,000/-, only Rs.3,00,000/- has been paid and the remaining cheques were not presented by the respondents. Thus, it is clear that petitioners have paid only Rs.3,00,000/- out of the total consideration amount of



Rs.1,17,76,000/-. In view of the specific admission made by petitioners that only Rs.3,00,000/- has been paid, it cannot be held that petitioners are entitled for getting their names mutated in the revenue records on the basis of sale deed where only an amount of Rs.3,00,000/- out of total consideration amount of Rs.1,17,76,000/- has been paid. This Court has not set aside the sale deed relied upon by the petitioners, but since mutation entry is not a document of title, therefore, this Court cannot confer title on the petitioners on the basis of a sale deed for which, according to the petitioners themselves, only an amount of Rs.3,00,000/- out of total consideration amount of Rs.1,17,76,000/- was paid to respondents.

11. So far as contention made by counsel for petitioners that at a later stage, petitioners have paid the remaining amount in cash is concerned, petitioners have not filed any receipt to show said transaction. Furthermore, Section 269SS of the Income Tax Act reads as under:-

“269SS. Mode of taking or accepting certain loans, deposits and specified sum.—No person shall take or accept from any other person (herein referred to as the depositor), any loan or deposit or any specified sum, otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed, if,—

- (a) the amount of such loan or deposit or specified sum or the aggregate amount of such loan, deposit and specified sum; or
- (b) on the date of taking or accepting such loan or deposit or specified sum, any loan or deposit or specified sum taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or



not), the amount or the aggregate amount remaining unpaid; or

- (c) the amount or the aggregate amount referred to in clause (a) together with the amount or the aggregate amount referred to in clause (b), is twenty thousand rupees or more:

Provided that the provisions of this section shall not apply to any loan or deposit or specified sum taken or accepted from, or any loan or deposit or specified sum taken or accepted by,—

- (a) the Government;
- (b) any banking company, post office savings bank or co-operative bank;
- (c) any corporation established by a Central, State or Provincial Act;
- (d) any Government company as defined in clause (45) of Section 2 of the Companies Act, 2013 (18 of 2013);
- (e) such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette:

Provided further that the provisions of this section shall not apply to any loan or deposit or specified sum, where the person from whom the loan or deposit or specified sum is taken or accepted and the person by whom the loan or deposit or specified sum is taken or accepted, are both having agricultural income and neither of them has any income chargeable to tax under this Act.

Provided also that the provisions of this section shall have effect, as if for the words “twenty thousand rupees”, the words “two lakh rupees” had been substituted in the case of any deposit or loan where,—

- (a) such deposit is accepted by a primary agricultural credit society or a primary co-operative agricultural and rural development bank from its member; or



- (b) such loan is taken from a primary agricultural credit society or a primary co-operative agricultural and rural development bank by its member.

Explanation.— For the purposes of this section,—

- (i) “banking company” means a company to which the provisions of the Banking Regulation Act, 1949 (10 of 1949) applies and includes any bank or banking institution referred to in Section 51 of that Act;
- (ii) “co-operative bank”, “primary agricultural credit society” and “primary co-operative agricultural and rural development bank” shall have the meanings respectively assigned to them in the *Explanation* to sub-section (4) of Section 80-P;
- (iii) “loan or deposit” means loan or deposit of money;
- (iv) “specified sum” means any sum of money receivable, whether as advance or otherwise, in relation to transfer of an immovable property, whether or not the transfer takes place.”

12. Therefore, any cash transaction exceeding Rs.20,000/- is not permissible as per law. Furthermore, petitioners have not shown their source of income out of which they have paid remaining amount of Rs.1,14,76,000/- to respondents. Thus, petitioners have miserably failed in *prima facie* satisfying this Court that the entire consideration amount of Rs.1,17,76,000/- was paid to respondents.

13. So far as civil suit filed by Noorbano is concerned, counsel for petitioners is right in submitting that the Additional Commissioner had given a wrong finding that the civil suit was filed by the father of respondents. However, even according to petitioners, Noorbano is one of the co-sharer and she has claimed her share in the property, which



also includes the land in dispute. If it is held that the land in dispute is an unpartitioned property, then even petitioners cannot purchase any specific piece of land.

14. Considering the totality of facts and circumstances of the case, this Court is of considered opinion that petitioners are not entitled for getting their names mutated in the revenue records merely by making payment of Rs.3,00,000/- out of total consideration amount of Rs.1,17,76,000/-. Under these circumstances, no case is made out warranting interference.

15. *Ex consequenti*, order dated 8/1/2024 passed by Additional Commissioner, Sagar Division, Sagar in case No.0807/Appeal/2023-24 is hereby **affirmed** though on different grounds.

16. Accordingly, the petition fails and is hereby **dismissed**.

(G.S. AHLUWALIA)
JUDGE

Arun*