

Kaushik Premkumar Mishra & Anr. Vs. Kanji Ravaria @ Kanji & Anr.

Civil Appeal No. 1573 of 2023 · Supreme Court of India · 2024-07-19 · Vikram Nath · Ahsanuddin Amanullah · F2J-C-1551

Full judgment text

Kaushik Premkumar Mishra & Anr. Vs. Kanji Ravaria @ Kanji & Anr.

[Civil Appeal No. 1573 of 2023]

Vikram Nath, J.

1. "Law is the king of kings, nothing is mightier than law, by whose aid, even the weak may prevail over the strong." The power structures of our society are such that the weaker ones often find themselves exploited and oppressed by those who yield greater power. Land ownership is one such arena where we see the swords of powerplay being sharpened with continued fraud, deceit, and greed.

While we shall deal with the facts of the present case in detail later, it is a classic example of continued suffering faced by the common man owing to mala fide intentions of the vendors who try to gain double-benefits, either by arm-twisting or through manipulation of the legal processes. Sometimes, the misery of the litigant is deepened when such travesty of justice is prolonged for decades. It is in cases like these, the law comes to the aid of the weak.

While adjudicating such cases, it is not just the lives and the properties of the people that we are dealing with, but also their trust in the legal system. In cases like the one before us, it is not for us to just mechanically analyse the contentious transactions but to also ensure that injustice is remedied and nobody is benefitted by their own wrongs. Justice knows no bias and thus, through its aid, even the weak may prevail over the strong.

2. This appeal by the plaintiff assails the correctness of the judgment and order dated 9th June, 2022 passed by the High Court of Judicature at Bombay, whereby the Second Appeal filed by the defendant no.2 (respondent no.1 herein) was allowed the judgment of the first Appellate Court was set aside and that of the Trial Court dismissing the suit of the appellant was maintained.

3. Respondent no.2 was the owner of Survey No.13 Hissa No.1 measuring 3.40 Hectares situate in village Shelwali, Tehsil Palghar, District Thane, Maharashtra. Half of the total area which would come to 1.70 Hectares on the western side is the suit land purchased by the appellants. Remaining half was purchased by collaterals of the appellants.

4. Relevant facts for appropriate adjudication of this appeal are as follows:

(a) Respondent no.2 herein executed a Sale Deed in favour of appellant no.1 and his minor brother Ambrish Mishra (since deceased) on 02.12.1985 with respect to suit land and the appellant no.1, along with his brother, was put into possession of the same.

(b) On the same date another Sale Deed was executed by the respondent no.2 in favour of one Param Umakant Mishra and Soharchha Jagdish Mishra (collaterals of the appellants) for the remaining half portion.

(c) On 05.12.1985 both the aforementioned Sale Deeds were presented for registration before the Sub-Registrar, Palghar.

(d) The Sale Deed in favour of Param Mishra and Soharchha Mishra was registered and later on their names were mutated in the revenue records. However, on account of deficiency in stamp duty, the Sale Deed in favour of the appellant no.1 and his minor brother could not be registered and remained pending for registration before the Sub-Registrar. As such their names could not be incorporated in the revenue records and the name of the respondent no.2 continued to be recorded.

(e) It would be relevant to mention that in the Sale Deed it was mentioned that the appellant no.1 is aged 18 years whereas his brother Ambrish, was a minor and was represented through his natural

guardian-mother (Smt. Malti).

(f) On 8th October, 1999, brother of the appellant Ambrish passed away issueless and later on his widow re-married, as such, his parents became the successors and legal heirs of the estate of Ambrish.

(g) On 3rd December, 2010 respondent no.2 executed a Conveyance Deed with respect to the suit land in favour of respondent no.1. It is the same land which was transferred in favour of the appellant no.1 and his brother in December, 1985.

(h) On 8th June, 2011 the appellants came to know about inspection of the suit land by some strangers, so they went to the spot. They found that respondent no.1, along with some musclemen, was trying to take possession of the suit land but on account of suit land being protected by fencing, they could not enter. It was at that time the appellant no.1 came to know about a conveyance deed in favour of respondent no.1 on the basis of which he was trying to take possession.

(i) The appellants thereafter made inquiries in the office of the Sub-Registrar and came to know that there was a sale deed dated 3rd December, 2010 in favour of respondent no.1

(j) After obtaining a certified copy of the said Deed, which was received on 14th June 2011, the picture became clear to the appellant. The fraud played on them by respondent no.2 of transferring the same property (suit land) in favour of respondent no.1, which had been earlier transferred in their favour, became apparent.

(k) The appellants then followed up registration of their sale deed. After removing the deficiency in stamp duty, the sale deed executed on 02.12.1985 and presented for registration on 05.12.1985 before the Sub-Registrar came to be registered on 14th June, 2011. The above incident of interference in possession by the respondent no.1 gave rise to filing of the suit.

5. The appellants along with Premkumar, father of appellant no.1, instituted a suit for cancellation of sale deed dated 03.12.2010 and for perpetual injunction on 27th June, 2011 which was registered as Special Civil Suit No.46 of 2011. The vendor was impleaded as defendant No.1 (respondent no.2 herein) and the subsequent purchaser as defendant No.2 (respondent no.1 herein). The facts as stated in paragraph 4 above are pleaded in the plaint as such are not being repeated.

6. Both the defendants filed separate written statements. The written statement filed by the defendant no.1 averred that the plaintiff was not entitled to any of the reliefs; the suit was barred by limitation; the land in suit was owned by him; that he did not recollect having executed any such sale deed in favour of the appellant no.1 and his brother; that the plaintiff purchasers were minors, as such, the sale deed in their favour was void; it was also denied that defendant no.2 had tried to trespass the property and take forcible possession with the help of musclemen.

7. Defendant no.2 in his written statement averred that the valuation of the suit was not proper; that no cause of action arose to file the suit; that the plaintiffs had suppressed material facts and documents and, as such, the suit was liable to be dismissed; that the plaintiff no.1 and his brother Ambrish were minors and, as such incompetent to contract; that as per section 11 of the Indian Contract Act, 1872 the transaction with minor was void and as such unenforceable in law; that guardian of minor Ambrish was shown as his mother whereas actually it should have been his father and therefore also the sale deed was bad; that there was no signature of plaintiff no.2 in the sale deed; that the widow of brother Ambrish was not made a party, as such, the suit was bad for non-joinder of the necessary party; that the sale deed was not duly registered as per provisions of law; that before registration no notice was issued to the vendor i.e. defendant no.1; no explanation or details were given with regard to the delay of 26 years in getting the registration; that under section 85 of the Registration Act, 1908, the documents pending for two years were liable to be destroyed, as such, the sale deed was not legal and proper; that there was interpolation in the documents of sale; that he was bona fide purchaser for value and had done so after verification of the title from the revenue records as also having searched the records of the Sub- Registrar; lastly, it was prayed that the suit be dismissed.

8. In the written statement of the respondent no.2 (defendant no.1) there was no specific denial of the execution of the Sale Deed on 02.12.1985 in favour of the appellant no.1 and his brother. There was also no specific or even general denial of not receiving the sale consideration. No suit for cancellation of the said Sale Deed has ever been filed nor any counter claim was filed by the defendants to the suit filed by the appellants assailing the sale deed dated 02.12.1985.

9. On the basis of the pleadings, the Trial Court framed the following issues:

"(i) Do plaintiffs prove that they are in possession and occupation of the suit land?

(ii) Do plaintiffs prove that they are owners of the suit land by virtue of registered Sale Deed dated 02/12/1985?

(iii) Do plaintiffs prove that the defendants were trying to take possession of the suit land forcibly and unauthorizedly?

(iv) Do plaintiffs prove that the Deed of Conveyance dated 03/12/2010 registered at serial No.9176 is void-ab-initio?

(v) Do plaintiffs prove that they are entitled for relief of permanent injunction against the defendants as prayed in the suit?

(vi) Do plaintiffs prove that they are entitled for any other relief?

(vii) Does defendant No.1 prove that the alleged Agreement to Sale dated 02/12/1985 is void-ab-initio?

(viii) Does defendant No.1 prove that the plaintiffs' suit is barred by limitation?

(ix) Does defendant No.2 prove that the Sale Deed dated 02/12/1985 was not enforceable by law?

(x) Does defendant No.2 prove that he is bona fide purchaser and the possessor of suit land?

(xi) What order and decree?"

10. The parties to the suit led evidence, both oral and documentary. On behalf of the plaintiffs Kaushik Premkumar Mishra examined himself as PW-1 and further examined Shri Mohan Joshi, Advocate as PW-2 and Prashant Mishra as PW-3. They also filed documentary evidence which included amongst others (i) sale deed dated 02.12.1985, (ii) certified copy of 7/12 extract of suit property, (iii) mutation entry no.668, (iv) Form No.1 of Register of Marriages for the year 2007 and (v) Conveyance deed dated 03.12.2010.

11. Defendant no.1 the vendor did not lead any evidence, either oral or documentary. He failed to appear and enter the witness box even to support his pleadings made in the written statements. There was also no cross-examination of PW-1 on his behalf.

12. Defendant no.2, the subsequent purchaser examined himself as DW-1, and further examined Ranjeet Patil as DW-2, Parvez Patel as DW-3, Sunit Patil as DW-4, Govind Rawaria as DW-5. He also filed voluminous documents relating to revenue records, mutation entries, search reports, copy of notices and various other documents relating to his possession.

13. The Trial Court, after considering the evidence led by the parties, dismissed the suit, vide judgment dated 24.02.2016. The Trial Court recorded the following findings:

13.1 Issues Nos.1,2,4,5 and 6 were decided in negative, whereas Issues nos. 7, 8, 9 and 10 in the affirmative, mainly for the reason that the appellant no.1 as also his brother were minors at the time of the execution of the Sale Deed on 02.12.1985, as such could not have entered into a contract being a minor and, therefore, the Sale Deed was void.

14. The appellants preferred appeal before the District Judge which was registered as Civil Appeal No.28 of 2016. The District Judge, vide judgment dated 7th March, 2019 allowed the appeal, set aside the judgment of the Trial Court and decreed the suit. The first Appellate Court framed the following points for determination in paragraph 14 of the judgment and in the said table, it also recorded the outcome of the said findings. The said table is reproduced below:

"14. Heard the Ld. Advocates for both the parties. Perused the record and the proceedings. Following points arise for my determination on which I have recorded my findings for the reasons to follow:

S. No. Points Findings

1. Whether plaintiffs prove that they are in possession and occupation of the suit property? In the affirmative.

2. Whether plaintiffs prove that they are owners of the suit land by virtue of registered sale deed dated 02.12.1985? In the affirmative.

3. Whether plaintiffs prove that the defendants were trying to take forcible possession of suit property unauthorizedly? In the affirmative.
4. Whether plaintiffs prove that the deed of conveyance dated 03.12.2010 registered at sr. no.9176 is void-ab-initio? In the affirmative.
5. Whether plaintiffs prove that they are entitled for relief of permanent injunction? In the affirmative
6. Whether plaintiffs prove that they are entitled for other reliefs? In the affirmative.
7. Whether defendant no.1 proves that the alleged agreement to sale dated 02.12.1985 is void ab-initio? In the negative.
8. Whether defendants prove that the suit is barred by Law of Limitation? In the negative.
9. Whether defendant no.2 proves that sale deed dated 02.12.1985 was not enforceable by law? In the negative.
10. Whether defendant no.2 proves that he is bona fide purchaser and in possession of the suit property? In the negative.
11. Whether judgment and decree in Spl. Civil Suit No.46 of 2011 requires interference and is liable to be set aside? In the affirmative.
12. What order? As per final order."

15. In the analysis, the First Appellate Court recorded the following findings also:

15.1. It held that the title of the property relates back to the date of execution of the sale deed and not the date of the registration.

15.2. It held that during the lifetime of the father, mother can act as the natural guardian of the minor.

15.3. The defendants having failed to seek a declaration of the sale deed dated 02.12.1985 being declared void ab-initio or for its cancellation, once the document is duly registered by the Sub-Registrar, it is only the competent Civil Court which would have the jurisdiction to declare it as cancelled or void ab-initio.

15.4. Merely because the challenge to the procedure has been made with respect to the registration, the submission of the defendants with respect to the delayed registration etc. gets washed out.

16. The said judgment was assailed by way of Second Appeal by the respondent no.1, the subsequent purchaser (defendant no.2) only. No appeal was filed by the respondent no.2 (defendant no.1), vendor of the appellant. This appeal was registered as Second Appeal No.649 of 2019.

17. By the impugned judgment dated 09.06.2022, the High Court has allowed the same and after setting aside the judgment of the first Appellate Court, restored that of the Trial Court and dismissed the suit. It is this judgment of the High Court, which is under challenge in the present appeal. The High Court framed the following substantial questions of law in paragraph 12 of the judgment which are reproduced hereunder: -

"12. The substantial questions of law raised in the appeal are:

- i) Whether execution of the sale deed dated 02.12.1985 at Exhibit 54 has been duly proved;
- ii) Whether the sale deed at Exhibit 54 conveys title in favour of plaintiffs;
- iii) Whether the findings of the first Appellate court on the issue of execution and validity of sale deed dated 02.12.1985 are not based on evidence on record and are perverse."

18. The High Court recorded the following findings:

18.1. The sale deed in question dated 02.12.1985 could not be held to be invalid for the sole reason that the deed was signed only by the vendor and not by the vendees (in favour of plaintiffs).

18.2. The fact that the purchasers were minors would not per se affect the validity of the sale deed (in favour of plaintiffs).

18.3. It criticizes the findings of the first Appellate Court regarding the sale deed dated 02.12.1985 having been validly proved by the plaintiffs to be not based on consideration of material facts on record as discussed and considered by the Trial Court while holding that the sale deed was not validly

proved.

18.4. It considered in great detail the provisions of the Registration Act to hold that the sale deed dated 02.12.1985 was not validly registered, as such, could not have been relied upon by the plaintiffs for any of the reliefs claimed by them or to maintain the suit.

19. We have heard Shri Vinay Navare, learned senior counsel for the appellants, Shri Ranjit Kumar, learned senior counsel appearing for respondent No.2 and Shri Huzefa Ahmadi, learned senior counsel representing respondent No.1.

20. The submissions of Shri Navare for the appellant may be summarized as under:

20.1. Respondent No.2 did not specifically deny execution of the sale deed in favour of appellant no.1 and his brother. He has only stated in the written statement that he does not recollect to have executed any such document.

20.2. Respondent No.2 did not cross-examine the appellant No.1 who had entered the witness box. The appellant No.1 had specifically stated, not only in the plaint but also in his deposition, that respondent No.2 had executed the sale deed on 02.12.1985 after receiving the sale consideration.

20.3. Respondent No.2, although filed a written statement making vague assertions but chose not to appear in the witness box apparently to avoid being cross-examined.

20.4. The first Appellate Court had decreed the suit of the appellant but no appeal was filed against the same by the respondent No.2. The only appeal filed before the High Court was by respondent No.1.

20.5. The objection as to the registration or the procedure adopted while registering the sale deed was essentially available to respondent No.2 but he did not raise it in the written statement. Further respondent no.2 neither cross-examined appellant No.1 nor did he enter the witness box nor did he assail the judgment of the first Appellate Court decreeing the suit.

20.6. The only manner in which respondent No.2 could have challenged the sale deed in favour of the appellants was by way of either a counter-claim or by way of an independent suit praying for cancellation of the sale deed by impleading the registering authority, which he chose not to do.

20.7. As there was no counter-claim filed by the defendant, in particular, respondent No.2, the question of validity of execution and registration of the Sale Deed dated 02.12.1985 in favour of the appellant no.1 and his brother, could not be tested.

20.8. The Trial Court did not frame any issue with respect to the validity of the registration process or the registration of the sale deed by the registering authorities, after such a long gap of 26 years. Without framing such an issue, the Trial Court committed serious error and a patent illegality in recording a finding with regard to the registration process and commenting on the registering authorities. Even the High Court committed the same illegality.

20.9. There is no limitation provided under the law for a sale deed which had been executed and duly presented before the Registrar for registration, for such document to be registered within a particular time. Even if there was a gap of 26 years from the date of presentation till the date of registration, it would not make any difference and the sale deed would relate back to the date of execution once registered.

20.10. The fact that the sale deed was duly executed on 02.12.1985 and thereafter presented for registration on 05.12.1985 is apparent from the fact that respondent No.2 on the same date i.e. 02.12.1985 had executed the sale deed for the remaining half portion of Survey No.13/1 in favour of collaterals of the appellant and further, the said sale deed in favour of the collaterals was also presented for registration on 05.12.1985 i.e. the same day on which the appellant presented the sale deed for registration. The sale deed of the collaterals was later on registered. However, the sale deed of the appellant no.1 remained pending for registration due to deficiency in stamp duty and was finally registered in 2011 after the deficiency was removed.

20.11. The registration of the sale deed of the appellant even after 26 years could not be said to be faulted on that ground alone. The said registration was never challenged either before superior authority of the registration department or before the High Court under Article 226 of the Constitution. Till date there is no challenge to the said sale deed in favour of the appellant either on the ground of

non execution by respondent No.2 or on the ground of the registration being faulty before any forum whatsoever.

20.12. Reference to the deposition of appellant No.1 has been made to submit that the appellant No.1 nowhere stated that no sale consideration was paid but he only stated that he had not placed any documents on record to show that the sale consideration of Rs.40,000/- had been paid.

20.13. The arguments advanced on behalf of respondent No.1 that the appellant No.1 was a minor, as such the sale deed was void, also does not benefit the respondents inasmuch as on behalf of the brother of the appellant No.1, who was stated to be a minor in the sale deed, was duly represented by his mother, natural guardian. As such the sale would, in any case, be valid insofar as the brother of the appellant No.1 was concerned.

20.14. The collusion of respondent Nos.1 and 2 was writ large and more than apparent from the conduct of the respondent No.2; that he did not cross-examine the appellant no.1; he did not enter the witness box; he did not lead any evidence and; he did not file any appeal before the High Court.

20.15. Reliance was placed upon the judgment of this Court in the case of Alka Bose vs. Parmatma Devi and others 3 wherein this Court had observed that in India, an agreement of sale signed by the vendor alone and possession delivered to the purchaser and accepted by the purchaser has always been considered to be a valid contract.

20.16. Lastly, it was submitted that the respondent No.1, the subsequent purchaser was not a bona fide purchaser. The sale deed in favour of respondent No.1 has a clause that the property was being sold on as is where is basis which clearly reflects that respondent no.1 had knowledge of the sale deed in favour of appellant and about their possession.

20.17. On such submissions, learned counsel for the appellants submitted that the appeal deserves to be allowed, the impugned order of the High Court deserves to be set aside and that of the first Appellate Court be maintained.

21. Mr. Ranjit Kumar, learned senior counsel appearing for respondent No.2 made detailed submissions which we shall note a little later. He, however, did not give any explanation whatsoever as to why the respondent No.2 did not cross-examine the appellant No.1, why the respondent No.2 did not enter the witness box in support of his pleadings stated in the written statement, why no evidence was led by him and why no second appeal was preferred by respondent No.2 against the judgment of the first Appellate Court decreeing the suit. The submissions advanced on behalf of respondent no.2 are summarized hereunder:

21.1. Much emphasis has been laid on the fact that the sale deed in favour of appellant was registered after 26 years.

21.2. With respect to the arguments relating to sale deed in favour of respondent No.1 mentioning on as is where is basis, the submission is that as there was encroachment on the suit property by the local tribal people as such this clause was inserted so that respondent No.2 would not be saddled with any further liability of handing over a clear and vacant possession.

21.3. The suit instituted by the appellant as framed, was not maintainable inasmuch as no relief of declaration of title was sought and only relief claimed was for cancellation of the sale deed dated 03.12.2010 executed in favour of respondent No.1 and further for grant of permanent injunction. This was deliberately done as suit for declaration would be time barred.

21.4. Once the pleadings have been exchanged and the issues are framed, the burden would lie on both the parties to establish their cases and it would be wrong on the part of the appellant to argue that the burden would be on the respondent alone with respect to certain issues.

21.5. The appellant No.1 has admitted that he did not know the details of the bank, cheque number, the date of the cheque, etc. and that he had no documents to show that consideration of Rs.40,000/- was paid except for the fact that it was mentioned in the sale deed. Reference was also made to section 25 of the Act, 1872 to submit that the agreements without consideration are void agreements.

21.6. Appellant No.1 had admitted that the property was not recorded in his name and that he had applied to the revenue authorities to record his name which he was pursuing from 1996.

21.7. Appellant No.1 declined to produce the pleadings of Special Civil Suit No.812 of 1996, the partition suit between the members of the family. Appellant No.1 admits of not challenging the Mutation Entry No.668 recorded in favour of respondent No.1 pursuant to the sale deed dated 03.12.2010.

21.8. Appellant No.1 admitted of not having clearance and prior sale permission from the competent authority which was a precondition for purchase of suit property.

21.9. The appellant No.1 admitted that the word "cash" in the sale deed was scored out and the word "cheque" was mentioned in its place and that on some pages of the sale deed, full signature of his mother are not there rather it has initials.

21.10. The appellant No.1 admitted that he does not remember as to who had presented the sale deed for registration in the year 1985 and admits that he was not the one who presented.

21.11. With respect to the submission that the suit was not maintainable as relief of declaration of title was not sought, reliance was placed upon the judgment of this Court in the cases of Anathula Sudhakar vs. P. Buchi Reddy & Ors. 4 and Raghwendra Sharan Singh vs. Ram Prasanna Singh by LR 5 .

21.12. Appellant No.1 had admitted in his deposition that he was a minor at the time of the execution of the sale deed on 02.12.1985 and the age shown in the sale deed that he was 18 years was incorrect. Under Section 11 of the Act, 1872 a minor is not competent to enter into a contract and as the appellant No.1 admitted that he was a minor at the time of the sale deed, the said contract would be void ab initio. Reliance was placed upon a judgment of this Court in the case of Mathai Mathai vs. Joseph Mary & Ors. 6 .

21.13. The burden of proof was on the plaintiff, who has based the suit on the sale deed dated 02.12.1985 to prove the same to be a valid sale. As the Trial Court recorded the finding that the appellants had failed to establish their right, title and interest in the suit property, there was shifting of the onus on the respondent No.2 would not arise and there was no necessity or requirement of the respondent No.2 to enter the witness box as the same would be of no consequence. Reliance was placed upon the judgment of this Court in Smriti Debbarma vs. Prabha Ranjan Debbarma 7 .

21.14. Referring to section 114 of the Indian Evidence Act, 1872 8 regarding presumption of existence of certain facts by the Court, it was submitted that although the said presumption is rebuttable but as the appellant No.1 in his cross-examination has made various admissions which were sufficient to decide the fate of the suit against him, it was not necessary for the respondent no.2 to either cross-examine him or to enter the witness box. Reliance was placed upon the judgment of this Court in the case of Kunda wd/o Mahadeo Supare & Ors. vs. Haribhau s/o Husan Supare 9 .

21.15. Appellant No.1 also admits that serial numbers of the stamps are not in continuation and that regular registration process of the sale deed was not complete at the time when the sale deed of 2010 in favour of respondent No.1 was registered.

21.16. Relying upon section 54 of the Transfer of Property Act, 1882 10 read with section 17 and 49 of the Registration Act, the submission is that an unregistered sale deed could not have been received in evidence as no title would pass on the basis of an unregistered document relating to immovable property. As such the respondent No.2 continued to be the owner of the suit property holding a valid title over the same. Reliance has been placed upon the following judgments:

Raghunath & Ors. vs. Kedar Nath 11 ; Bondar Singh & Ors. Vs. Nihal Singh & Ors. 12 ; Suraj Lamps and Industries Pvt. Ltd. vs. State of Haryana and Anr. 13 ; S. Kaladevi v. V.R. Somasundaram & Ors. 14 ; and M/s Paul Rubber Industries Pvt. Ltd. vs. Amit Chand Mitra & Anr. 15 .

21.17. Lastly it was submitted that as mandatory legal conditions were not fulfilled for the registration of the sale deed dated 02.12.1985, the same could not have been treated as a registered sale deed.

21.18. To elaborate the above argument following further facts were stated:

a) Appellant No.1 in his cross-examination (at Pg.135) has admitted that Defendant No.1 (original Vendor) was not called for completing process of registration on 14.06.2011 and that there is no endorsement of the Sub-Registrar on the last page of Sale Deed about completion of registration. Therefore, the mandates of Section 60, which prescribes as to what constitutes a Certificate of registration is not fulfilled and hence, the alleged sale deed was not validly registered on 14.06.2011 and therefore, alleged sale deed dated 02.12.1985 cannot be treated as a registered sale deed.

b) That the alleged sale deed was registered in violation of Section 32 of the Indian Stamp Act, 1899 and Sections 17 and 20 of the Act, 1908. The essential requirement under Section 54 of the TP Act were also not fulfilled. That from the record as well as the admission of appellant no.1, it is clear from the serial number of the stamps that the same are not in continuum.

c) As per Section 32 of the Stamp Act when any instrument is brought to the Collector then the Collector may determine the Stamp Duty. That in the present case, the alleged Sale Deed shows that at the time of presentation the stamp of Rs.1600/- was given but on 14.06.2011 the Sub-Registrar accepted extra amount of Rs.2200/- and penalty of Rs.500/- but there is no endorsement to show that it was sent to the Collector for determining the Stamp duty and it is not shown in the Sale Deed that deficit stamp duty was affixed. As per Sections 33 and 34 of the Stamp Act, the Collector has power to impound the document.

d) The alleged sale deed does not show that under which provision of law the Sub-Registrar had accepted the deficit charges after 26 years and no reasons were given as to why it was kept pending for such a long time.

e) Even if assuming for the sake of arguments without admitting that the alleged sale deed was presented before the Sub-Registrar, the same was unclaimed for 26 years and hence, by operation of Section 85, documents unclaimed for more than two years are required to be destroyed.

f) Compulsory affixing of photograph on the conveyance deed is also not followed at the time of registration process. Reliance was placed on the case of Veena Singh (dead) Thr. LRs. District Registrar/Additional Collector 16 .

22. Mr. Huzefa Ahmadi, learned Senior Counsel appearing for respondent No.1, the subsequent purchaser, has mainly laid stress on the point that respondent No.1 was a bona fide purchaser having exercised due diligence as such there would be no justification of cancellation of sale deed executed in his favour.

23. Mr. Ahmadi has also broadly submitted that the appellant no.1 had failed to prove the basis of claim i.e. the sale deed dated 02.12.1985 and as such had not acquired any right, title or interest in the suit property. The respondent No.2, therefore, was well within his rights to execute the sale deed in favour of the respondent No.1 in 2010. He has also referred to the statement of appellant No.1 in order to show certain admissions which already have been pointed out and noted above in the arguments of Mr. Ranjit Kumar, learned senior counsel appearing for respondent No.2. In so far as the main submission regarding bona fide purchase for value without notice, he referred to Section 41 of the TP Act, 1882 17 . Reliance has been placed upon the following judgements:

1. Sukhwinder Singh vs. Jagroop Singh and Anr. 18 ,

2. Seethakathi Trust Madras vs. Krishnaveni 19 ,

3. Hansa V. Gandhi vs. Deep Shankar Roy 20 ,

4. Hardev Singh vs. Gurmail Singh 21 ,

5. Raghwendra Sharan Singh vs. Ram Prasanna Singh by LR 22 .

24. In the additional written submissions, respondent no.1 has placed further reliance upon two judgments of this Court, for the proposition that the sale contract with the minor even though he was the vendee, would be void ab-initio. The two cases are Mathai vs. Mathai 23 , and another recent judgment dated 15.02.2024 passed in Civil Appeal No.2591 of 2024 @ SLP(Civil) No.23655 of 2019, Krishnaveni vs. M.A. Shagul Hameed and another.

Further, reliance was placed upon another judgment of this Court dated 15.02.2024 in C.A. No.002458 of 2024, Babasaheb Dhondiba Kure vs. Radha Vithoba Barde for the proposition that conveyance by way of sale would take place only at the time of registration of a sale deed in accordance with section 17 of the Act, 1908. Lastly, it is submitted that the suit was not maintainable as no relief for declaration of title was sought for which reliance was placed upon judgment of this Court in the case of The Tehsildar, Urban Improvement Trust and Anr. vs. Ganga Bai Menariya (dead) through Lrs. and others 24 .

25. Both the learned senior counsel for the respondents thus submitted that the appeal was devoid of merit and liable to be dismissed.

26. From the submissions advanced and the perusal of the material on record, the following issues/questions arise for consideration in the present appeal:

- 1) Whether the sale deed dated 02.12.1985 was executed by Respondent No. 2?
- 2) Whether the sale consideration was paid with respect to sale deed dated 02.12.1985?
- 3) Whether the sale deed dated 02.12.1985 was presented for registration on 05.12.1985 or not?
- 4) Whether delayed registration of the sale deed dated 02.12.1985 would prove to be fatal?
- 5) Whether non-mutation would take away the right created by the sale deed in favor of the vendees?
- 6) Whether respondent no.2 had any right, title or interest left in the suit property after 02.12.1985?
- 7) Whether the sale deed dated 02.12.1985 was void as the vendees were alleged to be minors?
- 8) Whether the respondent no. 1 was a bona fide purchaser for value by way of a subsequent sale deed dated 03.12.2010?

27. Having considered the submissions advanced by the counsels for the parties our analysis on the issues stated above is as under. As the issues/questions raised are interlinked, they have been taken up together in our analysis.

28. At the outset, it may be relevant to refer to the certified/xerox copy of the sale deed dated 2.12.1985, presented for registration on 5.12.1985, copies of which were filed by both the sides under the direction of this Court. We have carefully perused the sale deed. The following facts may be noticeable from the said perusal:

- (i). The stamp paper had been purchased on 29.11.1985.
- (ii). The document was prepared and executed on 02.12.1985
- (iii). The document was presented before the Sub- Registrar on 5.12.1985. The total value of the stamp paper used was Rs 1,600/-.
- (iv). The document was presented by respondent no.2, the vendor.
- (v). The document bears the signature of Anees Ismail Khoja, respondent no. 2, the witnesses and also contains the respective endorsement by the Sub-Registrar.
- (vi). The document was impounded for non-payment of proper stamp duty. However, on 14.6.2011 the deficiency in stamp duty of Rs.2200/- along with penalty of Rs.500/- and other statutory payments of Rs.700/- having been paid, it was finally registered in Book No. 1 from pages 141- 147.
- (vii). The document bears the signatures of not only the vendor, the attesting witnesses and also the necessary endorsement by the Sub-Registrar. This makes it abundantly clear that the sale deed was executed on 02.12.1985 and presented before the Sub-Registrar on 5.12.1985. Later on, it was registered on 14.06.2011.

29. The Trial Court and the High Court had proceeded on the premise that the defendant No.1 - the vendor (respondent no.2 herein) had denied the execution of the sale deed and had also denied that he had not received any consideration. This premise taken by both the Courts i.e. Trial Court and the High Court are contrary to the pleadings on record and the evidence led during the Trial. There is clear misreading of the evidence. In his written statement in paragraph 7 defendant no.1 (vendor) has stated that he does not recollect having executed the sale deed.

He has not specifically denied anywhere in the written statement that he had not executed the sale deed or that the signatures on the sale deed were not his signatures. Thus, the very premise on the basis of which the Trial Court and the High Court proceeded are perverse being contrary to the material on record. Both the said courts also failed to take into consideration that defendant no.1 the vendor (respondent no.2 herein) neither entered the witness box in support of his pleadings and to prove them, nor did lead any evidence, either oral or documentary, in support of his pleadings.

There was no justification to treat a vague statement in the written statement of not recollecting about execution of sale deed, to be taken as a denial of the execution. The defendant no.1 - the vendor was deliberately and mischievously avoiding to make specific statement either denying his signatures on the sale deed or his presentation before the Sub- Registrar or had not received any sale consideration. The Trial Court and the High Court fell into the trap of clever drafting and a vague statement of

defendant no.1.

30. The Trial Court and the High Court also committed a manifest error in recording that the defendant no.1- vendor (respondent no.2 herein) had denied having received any sale consideration with respect to the sale deed dated 02.12.1985. In the written statement filed by the defendant no.1, there is no such statement made.

In case he had made such a statement then he would be admitting the execution but without consideration. Both the Courts again misread the deposition of appellant no.1 (PW-1) wherein he said that he does not have any proof of payment of the consideration to hold that no sale consideration was paid. A registered document carries with it presumption of correctness unless proved otherwise as per Section 114 of the Evidence Act read with Section 17 of the Act, 1908. In the present case there is no such evidence.

31. The defendant no.1 having not entered the witness box and not having led any evidence, it was a mere presumption of the Trial Court and the High Court to have recorded that defendant no.1 denied receiving any sale consideration.

32. Based upon the aforesaid two factual errors, the Trial Court and the High Court wrongly shifted the burden on the plaintiff to prove execution of the sale deed and also payment of the sale consideration. The impugned judgment thus suffers from manifest error of law and facts both.

33. The appeal deserves to be allowed on several other grounds which we are dealing hereunder and hereinafter.

33.1. It is not disputed by respondent No.2 that on 02.12.1985, he had executed another sale deed with respect to the remaining portion of survey No.13/1 in favour of the collaterals of the appellants, namely, Param Umakant Mishra and Soharchha Mishra. This sale deed in favour of the collateral was presented for registration on the same date as the sale deed of the appellant i.e. 05.12.1985 and was thereafter duly registered. The respondent No.2 has never challenged the said sale deed in favour of the collaterals.

It is thus apparent that the family members and collaterals of the appellants purchased the entire survey No. 13/1 measuring 3.40 Hectares from respondent No.2 in equal shares by two separate documents which were executed on the same date and presented for registration on the same day. Despite the fact that specific query was put to learned senior counsel for respondent no.2 with regard to the above aspect, no answer was given. In the plaint specific averment was made with regard to the sale deed in favour of the collaterals. There is no specific denial in the written statement filed by respondent No.2 about the sale deed in favour of collaterals. General denial has been made by placing strict proof of liability on the plaintiff.

33.2. The respondent No.2 apparently wants to take advantage of certain minor aberrations and minor technicalities and is also taking up self-conflicting pleas.

33.3. The sale deed is sought to be ignored and rejected on account of a minor cutting/over writing with regard to the word 'cash' (Roch) by 'cheque'. The fact remains that respondent No.2 did not enter the witness box to depose that he has not received any sale consideration either by way of cash or by way of cheque and further to state that he had not executed the sale deed and the signatures and thumb impression on the sale deed are not his. He also did not come forward to say that the signatures and thumb impression available in the Sub- Registrar's office in the register taken at the time for registration also did not bear his signatures.

33.4. Another aspect submitted on behalf of respondent was that the appellant No.1 in his deposition has said that he had no proof of the payment of the sale consideration, to assert that the appellant No.1 admitted that he had not paid any sale consideration is not correct. Appellant No.1 was being examined sometime after 2013, i.e. after a gap of 28 years from the date of the sale deed. He could not be expected to remember such facts distinctly and as such he made a fair statement that he did not have any document that could prove the passing of the sale consideration. This would not, by itself, be interpreted to hold that appellant admitted of not paying any sale consideration.

33.5. The question of payment of sale consideration would arise only and only if the vendor makes a specific statement in his pleadings as also in his deposition in support of the pleading that he did not receive any sale consideration either by way of cheque or by cash. There is no such pleading and as the vendor did not enter the witness box, even if there was any such pleading, there is no statement

to prove such pleading. Thus, the above argument being based on minor discrepancy in the statement of the appellant, no benefit can be derived by the respondents. The argument is accordingly rejected.

33.6. There is one more reason to reject this argument. Even if assuming that no sale consideration was paid even though there was a registered sale deed, it would be at the instance of the vendor to challenge the said sale deed on the ground of no sale consideration being paid. In the present case, there is no such challenge to the sale deed for being declared as void or being cancelled on such ground. Thus also, the said argument deserves to be rejected.

33.7. It has also been argued on behalf of the respondents that appellant No.1, in his deposition, stated that he did not remember as to who had presented the document for registration. Such statement would not be relevant at all inasmuch as the fact remains that the document of sale was presented for registration on 05.12.1985, which fact is not denied.

Who presented the document is not relevant. It was for the registering authority to examine and once the document is registered, it is presumed that it was presented by the competent person and necessary signatures of the vendor and vendee must have been taken by the registering authority. From a perusal of the xerox copy of the sale deed it is apparent that there is an endorsement by the Sub- Registrar that the sale deed was presented by respondent no.2, the vendor (defendant no.1 in the suit).

33.8. The submission with regard to delay of 26 years in getting the document registered also does not extend any benefit to the respondents. Non-registration of a document duly presented for registration could be for many reasons. But once it is registered, there is a presumption of correctness attached to it, that is to say that the document has been duly executed and registered in accordance to law. It was for the defendants (respondents) to come forward and to establish that the document was wrongly registered.

They did not lead any evidence in this respect. Instead, they tried to put burden on the plaintiff-appellant by requiring him to call the Sub-Registrar as a witness, which the appellant rightly denied. It was always open for the respondents to have called for the records of the Sub- Registrar's office and also the Sub-Registrar in order to find out any mandatory lacuna or illegality or lack of procedure not being followed with respect to the registration. They did nothing of this sort.

33.9. In fact, respondent No.2 did not make any bone of contention with regard to the registration process and the registration of the documents after 26 years by challenging the same before the same authority or any superior authority or any Court of law. Registration of a document carries with it presumption of correctness until and unless the same was challenged by way of independent proceeding or a counter claim. In the absence of any such claim, the sale deed in favour of the appellants has to be treated as a valid document.

33.10. Much stress has been laid by Mr. Ranjit Kumar, and Mr. Huzefa Ahmadi learned senior counsel appearing for respondents that once the appellant No.1 admitted that he was a minor at the time of execution of the sale deed and that his age was incorrectly recorded as 18 years in the sale deed, the sale deed would be void ab initio and would not transfer any right, title or interest in the favour of the appellants. This submission is again liable to be rejected.

The sale deed was in favour of two persons, appellant No.1 as also his minor brother, Ambrish who was mentioned to be a minor in the sale deed and was represented through his natural guardian, his mother. The sale deed, therefore, in any case, would be valid in so far as the rights of Ambrish are concerned. Respondent No.2 for 26 years never came forward to return the sale consideration and for rescinding the contract of sale. His intentions are clearly tainted with malice and dishonesty. His conduct throughout the trial and at appeal stage also reflects the same.

33.11. The issue of minority of appellant no.1 would also not be of any relevance for the reason that even if he was a minor at the time of the execution of the sale deed and he had so stated honestly in his deposition, the fact remains that the mother of appellant No.1 was already representing his younger brother as guardian who was stated to be a minor in the sale deed. She was also the natural guardian of appellant no.1, and therefore, it would be deemed that she was acting on behalf of both her minor sons.

33.12. The High Court recorded the findings that the fact that the purchasers were minors would not per se affect the validity of the sale deed for the reason that the second purchaser Ambrish who was

mentioned as a minor in the sale deed was represented through his natural guardian and mother Smt. Malti Premkumar Mishra and also that the age of the first purchaser Kaushik was mentioned to be 18 years in the sale deed.

33.13. The respondent no.2 appears to be a dishonest person. We are saying so for very strong reasons, which are apparent from his conduct not only during the trial but also acting in collusion with respondent no.1 to execute the sale deed for the same land which he had already transferred. The issue of registration of a document is with the State, which requires compulsory registration of documents so that it is not deprived of revenue by way of stamp duty payable on such transfers of immovable property.

If the purchaser has no means to pay stamp duty or exorbitant demand of stamp duty is made by the registering authority which the purchaser is unable to pay at that time but he remains satisfied with the fact that the vendor has fairly and duly executed the sale deed presented it for registration and put him in possession of the purchased property which he is peacefully enjoying, he is always at liberty to pay the deficiency of stamp duty at any point of time. The document presented for registration will remain with the Registering Authority till such time, the deficiency is removed.

However, this pendency of registration on account of deficiency cannot enure any benefit to the vendor, who has already eliminated all his rights by executing the sale deed after receiving the sale consideration. He cannot become the owner of the transferred land merely because the document of sale is pending for registration. It is the purchaser who cannot produce such document which is pending registration with respect to the immovable property in evidence before the Court of law as the same would be inadmissible in view of statutory provision contained in the TP Act as also the Act, 1908.

34. Coming to the submission of Mr. Ahmadi, learned senior counsel for the subsequent purchaser-respondent No.1, his claim would come up for consideration only if it is finally held that the sale deed of 02.12.1985 was not a valid sale deed. As otherwise all the rights, title and interest of the vendor- respondent no.2 would be curtailed from the date of execution of the first sale deed on 02.12.1985.

As we have already held above that the sale deed cannot be discarded as void ab initio, rather we have held that it is a valid document of sale, therefore, no benefit can be extended to respondent no.1. Respondent no.1 would enter the shoes of the respondent no.2. If respondent no.2 had alienated all his rights, title and interest and also delivered possession, respondent no.1 could not claim to be a bona fide purchaser for value without notice.

35. The doctrine of bona fide purchaser for value applies in situations where the seller appears to have some semblance of legitimate ownership rights. However, this principle does not protect a subsequent purchaser if the vendor had already transferred those rights through a prior sale deed. In a case where the vendor deceitfully executes a second sale deed 26 years after the initial transfer, without disclosing the earlier transaction and without any ongoing litigation regarding the property, the subsequent purchaser cannot claim the benefits of a bona fide purchaser.

Essentially, if the vendor's rights were already severed by the first sale, any later sale deed made without transparency and in bad faith is invalid. The subsequent purchaser, even if unaware of the prior sale, cannot be considered bona fide because the vendor no longer had the legal right to sell the property. Thus, the protection afforded by the bona fide purchaser doctrine is nullified by the vendor's deceitful conduct and the pre-existing transfer of rights. This ensures that the original purchaser's rights are upheld and prevents unjust enrichment through fraudulent transactions.

36. This is not a case of agreement to sell in favour of appellants but is a case of sale deed transferring ownership rights and possession. It would be open to respondent no.1 to avail such remedy as may be available under law to recover the sale consideration paid by him to respondent No.2. The sale deed in favour of the respondent No.1 dated 03.12.2010 needs to be cancelled and the registering authority be directed to score out the same from the records as directed by the first Appellate Court.

37. Another argument raised that the sale deed did not contain the signatures of the mother also deserves to be rejected. Prior to insertion of section 32A in the Act, 1908 in the year 2001 there was no requirement under law that the vendee must mandatorily sign the document of sale for immovable property and also affix passport size photograph and thumb impression along with proof of identification. In the present case the sale deed was presented for registration in 1985, much before

2001.

38. Mr. Ranjit Kumar, learned senior Counsel appearing for Respondent No. 2, has relied upon the following judgments in order to substantiate his arguments pertaining to the issue of registration of the sale deed:

- a. Raghunath Singh & Ors. v. Kedar Nath 25 ,
- b. Bondar Singh & Ors. v. Nihal Singh & Ors. 26 ,
- c. Suraj Lamps and Industries Pvt. Ltd. v. State of Haryana and Anr. 27 ,
- d. S. Kaladevi v. V.R. Somasundaram & Ors. 28 ,
- e. M/s Paul Rubber Industries Pvt. Ltd. v. Amit Chand Mitra & Anr. 29 ,
- f. Maya Devi v. Lalta Prasad 30 ,
- g. Veena Singh (dead) thr. LRs. v. District Registrar/Additional Collector 31

39. We observe that the cases relied upon by the Respondent No. 2 do not extend any kind of benefit in the facts of the present case as the judgments above are clearly distinguishable on facts. Thus, to avoid lending any further burden on the instant judgment, we are not dealing with them on their individual facts.

40. In view of the discussions made above, the appeal deserves to be allowed. The impugned judgement of the High Court is set aside and that of the first Appellate Court decreeing suit of the appellant is restored and maintained.

41. Facts of this case deserves that the suit should be decreed with exemplary costs considering the conduct of the defendant-respondents, which is quantified at Rs.10,00,000/- (Rupees ten lakhs only) to be paid to the appellants within eight weeks from today. The liability to pay costs shall be borne equally by each of the two respondents. Proof of payment of costs may be filed before this Court within ten weeks from today.

42. Pending application(s), if any, is/are disposed of.

.....J. (Vikram Nath)

.....J. (Ahsanuddin Amanullah)

New Delhi

July 19, 2024

1 The Act, 1872

2 The Act, 1908

3 (2009) 2 SCC 582

4 (2008) 4 SCC 594, (relevant paras 13-16, 21)

5 (2020) 16 SCC 601 (para 7-10).

6 (2015) 5 SCC 622 (para 16-19).

7 (2023) SCC On Line SC 9 (para 35).

8 The Evidence Act

9 (2014) 5 Mah. L.J.726 (para 8).

10 The TP Act

11 (1969) 1 SCC 497 (para 3);

12 (2003) 4 SCC 161 (para 5);

13 (2009) 7 SCC 363 (para 15-18);

14 (2010) 5 SCC 401 [para 12,13,15]

15 SLP No.15774 of 2023.

16 (2022) 7 SCC 1
17 TP Act
18 2020 SCC Online SC 86
19 (2022) 3 SCC 150
20 (2013) 12 SCC 776
21 (2007) 2 SCC 404
22 (2020) 16 SCC 601
23 (2015) 5 SCC 622
24 (2024) 2 SCR 650
25 (1969) 1 SCC 497
26 (2003)4 SCC 161
27 (2009) 7 SCC 363
28 (2010) 5 SCC 401
29 SLP (C)No.15774 of 2023 decided on 25.09.2023
30 (2015) 3 SCC 588
31 (2022) 7 SCC 1

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