

2023 LiveLaw (SC) 582 : 2023 INSC 658

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

ABHAY S. OKA; J., RAJESH BINDAL; J.

CIVIL APPEAL NO.10412 of 2013; July 31, 2023

Yogendra Prasad Singh (Dead) through LRs *versus* Ram Bachan Devi & Ors.

Transfer of Property Act, 1882; Section 54 - Sale deed - Normally, on the execution and registration of a sale deed containing recitals regarding the payment of consideration and delivery of possession, the sale is complete even if the sale price is not paid and, therefore, it will not be possible to cancel the sale deed in its entirety. However, the exception to the said rule is the practice of *ta khubzul badlain*. The use of the expression *ta khubzul badlain* in a sale deed by itself will not be determinative of the true nature of the transaction. It cannot be read in isolation. All the terms and conditions and recitals in the document will have to be considered to decide the real nature of the transaction. Referred to *Janak Dulari & Anr. v. Kapildeo Rai & Anr. (2011) 6 SCC 555 (Para 13)*

For Appellant(s) Mr. Kumar Parimal, Adv. Mr. P. V. Yogeswaran, AOR

For Respondent(s) Mr. T. Mahipal, AOR Mr. Smarhar Singh, AOR Ms. Shweta Kumari, Adv. Mr. Chinmay Kumar, Adv. Mr. Mohd. Asim, Adv. Mr. Manoj Kumar, Adv.

J U D G M E N T

Abhay S. Oka, J.

FACTUAL BACKGROUND

1. The appellants are the legal representatives of the original plaintiff. For the sake of convenience, parties are hereinafter referred to with reference to their status before the Trial Court. The Trial Court decreed the Suit which has been reversed in appeal.
2. The plaintiff is the son-in-law of the first defendant. The first defendant has four daughters. One of the daughters, Sachita Devi has been married to the plaintiff. The second defendant is another daughter of the first defendant who is married to one Komal Singh.
3. The first defendant was heavily indebted. He had borrowed money from various persons by executing mortgage deeds, hand notes, etc. As the first defendant was unable to pay debts, he decided to sell the suit property. Accordingly, he executed a registered Sale Deed on 04th February 1963 in favour of the plaintiff for consideration of Rs.10,000/-. According to the case of the plaintiff, he was placed in possession of the suit property and started cultivating the same. His contention was that there was an absolute sale under the Sale Deed dated 04th February 1963 (for short, 'the Sale Deed').
4. Even according to the case of the plaintiff, a part of the consideration was to be paid by him to the creditors of the first defendant. In the plaint, the plaintiff has described the steps taken by him to clear the loans repayable by the first defendant and money paid by him from time to time to various persons in that behalf. His contention is that he paid off the debt as mentioned in the Sale Deed. The plaintiff has contended that the first defendant being his father-in-law, collected the registered Sale Deed from the office of the Sub-Registrar and has kept the same in his custody.
5. The first defendant executed a registered Deed of Cancellation dated 15th June 1967 in respect of the cancellation of the Sale Deed. The plaintiff was admittedly not a signatory to the said Deed of Cancellation. Thereafter, the first defendant purported to

execute a Gift Deed dated 12th January 1968 (for short 'the Gift Deed') in respect of the suit property in favour of the second defendant. The case of the plaintiff is that though he was all along in possession, on the basis of the order passed in proceedings under Section 145 of the Code of Criminal Procedure, 1973 he was illegally dispossessed from the suit property. Therefore, the plaintiff filed a Suit for declaration of title. The plaintiff also claimed a declaration that the Gift Deed is forged. The plaintiff prayed for a decree for possession of the suit property.

6. The basic contention of the first defendant in his written statement was that by the Sale Deed, absolute sale was not effected. It is contended that out of the consideration of Rs.10,000/-, the plaintiff had agreed to pay a sum of Rs.6,875/- for redeeming the 10 mortgages made by the first defendant. The balance amount of Rs.3,125/- was to be paid on the exchange of equivalentents (*ta khubzul badlain*). The contention of the first defendant is that in fact the mortgages were redeemed by him and therefore, he was in possession of the mortgage deeds. His contention is that as no consideration was passed under the Sale Deed, the plaintiff has not acquired any right, title or interest in the suit property.

7. The Trial Court after in-depth consideration of the evidence on record, concluded that the plaintiff had acquired ownership in respect of the suit property on the basis of the Sale Deed. It was held that the Deed of Cancellation dated 15th June 1967 being a unilateral document was not valid. The Trial Court held that the remedy of the first defendant was to invoke Section 31 of the Specific Relief Act, 1963 and seek cancellation of the Sale Deed. The Trial Court also held that the second defendant did not acquire any right, title or interest on the basis of the Gift Deed executed by the first defendant. The Trial Court accepted the case made out by the appellant that the liabilities of the first defendant were discharged by him.

8. In the appeal against the decree of the Trial Court preferred by the original defendants, the High Court interfered with the impugned judgment and held that as consideration was not paid under the Sale Deed, the plaintiff did not acquire any right, title or interest in respect of the suit property. The High Court did not accept the plaintiff's case that he had discharged the loan liability of the first defendant. The Trial Court had accepted that the plaintiff had paid a cash amount of Rs.3,125/- to the first defendant at the time of the exchange of equivalentents. The said case was disbelieved by the High Court. Therefore, the High Court proceeded to set aside the decree of the Trial Court and dismissed the Suit.

SUBMISSIONS

9. The learned counsel appearing for the legal representatives of the plaintiff submitted that on the execution of the Sale Deed, right, title and interest of the first defendant in the suit property were passed on to the plaintiff. He submitted that there was substantial evidence on record to show the discharge of liabilities of the first defendant by the plaintiff. Inviting our attention to the recitals in the Sale Deed, he submitted that it is clearly recorded that the title and possession passed on to the plaintiff. He submitted that the first defendant being the father-in-law of the plaintiff had retained the Sale Deed. Considering the relationship between the plaintiff and the first defendant, it is not unnatural that the plaintiff did not object to the custody of the Sale Deed by the first defendant. He submitted that the findings of fact recorded by the High Court regarding the payment of liabilities of the first defendant by the plaintiff are completely erroneous. He submitted that there is nothing abnormal about the possession by the first defendant of the mortgage deeds. Though the mortgage money was paid by the plaintiff, the mortgage deeds were handed over to the first respondent as he was the mortgagor.

10. The learned counsel appearing for the first and second defendants heavily relied upon a decision of this Court in the case of **Janak Dulari & Anr. v. Kapildeo Rai & Anr.**¹. He submitted that this Court in the said decision has taken note that the practice of *ta khubzul badlain* (of title passing on the exchange of equivalents) is prevalent only in Bihar. He submitted that this Court held that the practice of *ta khubzul badlain* in Bihar recognizes that a duly executed Sale Deed will not operate as a transfer *in praesenti* but postpones the actual transfer of title from the time of execution and registration of the deed to the time of exchange of equivalents. In such a case, the title on the basis of the Sale Deed will pass to the purchaser only after the entire amount is paid by the purchaser. Inviting our attention to the recitals in the Sale Deed, he submitted that it was a transaction to which the practice of *ta khubzul badlain* was applicable. He submitted that as the title in the Suit property never passed on to the plaintiff, the first defendant rightly executed a Deed of Cancellation of the Sale Deed. He submitted that there is no reason to find fault with the reasoning adopted by the High Court.

11. The learned counsel appearing for the legal representatives of the plaintiff submitted that in very difficult times faced by the first defendant, the plaintiff, his son-in-law, took the risk of taking the suit property, which was the subject matter of encumbrances.

OUR VIEW

12. A sale deed of an immovable property is executed in accordance with Section 54 of the Transfer of Property Act, 1882 (for short, 'the 1882 Act'). There cannot be any dispute that normally, on the execution of a registered Sale Deed by the owner of the property, the title in the property subject matter of the Sale Deed stands transferred to the purchaser. Considering the principles laid down in sub-section (4)(b) of Section 55 of the 1882 Act, the seller will have a charge over the property subject matter of the sale for unpaid consideration and he can enforce the charge by filing a suit.

13. The entire case of the defendants is based on the decision of this Court in the case of **Janak Dulari Devi**¹. In paragraph 20 of the said decision this Court held thus:

"20. We have referred to several decisions of the Patna High Court in detail to demonstrate the existence of the established practice of exchanging equivalents (*ta khubzul badlain*). The effect of such transactions in Bihar is that even though the duly executed and registered sale deed may recite that the sale consideration has been paid, title has been transferred and possession has been delivered to the purchaser, the actual transfer of title and delivery of possession is postponed from the time of execution of the sale deed to the time of exchange of the registration receipt for the consideration, that is, *ta khubzul badlain*."

(emphasis added)

Paragraph 24 of the decision reads thus:

"24. We hasten to add that the practice of *ta khubzul badlain* (of title passing on exchange of equivalents) is prevalent only in Bihar. Normally, the recitals in a sale deed about transfer of title, receipt of consideration and delivery of possession will be evidence of such acts and events; and on the execution and registration of the sale deed, the sale would be complete even if the sale price was not paid, and it will not be possible to cancel the sale deed unilaterally. The exception to this rule is stated in *Kaliaperumal* [(2009) 4 SCC 193 : (2009) 2 SCC (Civ) 101] . The practice of *ta khubzul badlain* in Bihar recognises that a duly executed sale deed will not operate as a transfer *in praesenti* but postpones the actual transfer of title, from the time of execution and registration of the deed, to the time of exchange of equivalents, that is, registration receipt and the sale consideration, if the

¹ (2011) 6 SCC 555

intention of the parties was that title would pass only on payment of entire sale consideration. As a result, until and unless the duly executed and registered sale deed comes into the possession of the purchaser, or until the right to receive the original sale deed is secured by the purchaser by obtaining the registration receipt, the deed of sale remains merely an agreement to be performed and will not be a completed sale. But in States where such a practice is not prevalent, possession of registration receipt by the vendor, may not, in the absence of other clear evidence, lead to an inference that consideration has not been paid or that title has not passed to the purchaser as recited in the duly executed deed of conveyance. Where the purchaser is from an outstation, the vendor being entrusted with the registration receipt, to collect the original sale deed and deliver it to the purchaser, is common. Be that as it may.”

(emphasis added)

Thus, this Court held that normally, on the execution and registration of a sale deed containing recitals regarding the payment of consideration and delivery of possession, the sale is complete even if the sale price is not paid and, therefore, it will not be possible to cancel the sale deed in its entirety. However, the exception to the said rule is the practice of *ta khubzul badlain*. The use of the expression *ta khubzul badlain* in a sale deed by itself will not be determinative of the true nature of the transaction. It cannot be read in isolation. All the terms and conditions and recitals in the document will have to be considered to decide the real nature of the transaction.

14. We have, therefore, examined the recitals in the Sale Deed from the translated English version of the same produced by the appellants. The English translation shows that –

- (a) There is a specific recital that the first defendant has transferred the possession of the suit property to the plaintiff in the capacity of the owner and that the plaintiff will become the owner of the property;
- (b) It also mentions that from the date of Sale Deed, the first defendant has no claim or title in respect of the suit property or regarding its price;
- (c) Nothing was due and payable by the plaintiff to the first defendant as the first defendant had received consideration; and (d) The plaintiff who was the son-in-law of the first defendant took the suit property with encumbrances when the first defendant was in trouble due to liabilities.

15. Therefore, the use of the words “khubzul badlain”, in the facts of the case, cannot be conclusive. It is true that the Sale Deed refers to various mortgages executed by the first defendant for getting money and the recitals indicate that the plaintiff had agreed to discharge the said loan liabilities. But, there is a specific recital in the Sale Deed that the title and possession in the property has been passed to the plaintiff. These recitals regarding the transfer of title and possession are very crucial which cannot be brushed aside.

16. On overall reading of the Sale Deed, it is apparent that under the Sale Deed, the entire right, title and interest of the first defendant in the suit property has been transferred to the plaintiff by the said sale deed. At the highest, as per sub-section (4)(b) of Section 55 of the 1882 Act, the first defendant was entitled to have a charge on the suit property for the amount of consideration which was not paid by the plaintiff. Even this provision may not help the first defendant. The reason is that the plaintiff has taken over the suit property with liabilities as set out in the Sale Deed. The creditors of the first defendant can, therefore, proceed against the suit property. Once we hold that the title and ownership passed on to the plaintiff on the date of Sale Deed, it is not necessary to go into the

question whether the appellant has discharged liabilities of the loan especially when the first or second defendants did not file a counter-claim for payment of the consideration payable under the Sale Deed.

17. There is one more aspect of the case. If it was the case of the first defendant that there was no transfer of title under the said Sale Deed, there was no reason for him to unilaterally execute a document of cancellation of the sale deed. In any case, such a unilateral cancellation deed was not binding on the plaintiff as he was not a consenting party. The second defendant will not get any right by virtue of the gift deed as the first defendant had no transferable title. As the ownership of the plaintiff is proved, the decree for possession must follow. There was no counter-claim made by the first or second defendant for claiming alleged unpaid consideration.

18. Therefore, the appeal succeeds. The impugned judgment and order passed by the High Court of Patna in First Appeal No.334 of 1988 is quashed and set aside and the decree passed by the Trial Court in Title Suit No.142 of 1977 is restored.

19. The appeal is allowed on the above terms with no order as to costs.

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