REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 6989-6992 OF 2021
[Arising out of SLP (C) Nos. 2033-2036 of 2016]

KEWAL KRISHAN ..... APPELLANT

v.

RAJESH KUMAR & ORS. ETC. ..... RESPONDENTS

J U D G M E N T

ABHAY S. OKA, J.

Leave granted.

FACTUAL ASPECTS

1. The appellant Kewal Krishan and his elder brother (one of the respondents) Sudarshan Kumar acquired the properties which are the subject matter of these appeals (for short "the suit properties") under the sale deeds dated 12th August 1976 and 19th October 1976.

2. The appellant Kewal Krishan executed a power of attorney in favour of Sudarshan Kumar on 28th March 1980. Acting on the basis of the said power of attorney, two sale deeds were executed by Sudarshan Kumar on 10th April 1981. The first sale deed was executed by him by which he purported to sell a part of the suit properties to his minor sons. The sale consideration was shown as Rs.5,500/-. The other sale deed was executed by Sudarshan Kumar in favour of his wife in respect of remaining part of the suit properties. The consideration shown in the sale deed was of Rs.6,875/-. The respondents are Sudarshan Kumar, his wife and his sons.

3. Two separate suits were instituted by the appellant on 10th May 1983. One was against Sudarshan Kumar and his two sons and the other one was against Sudarshan Kumar and his wife. Both the suits, as originally filed, were for injunction restraining the defendants from interfering with the possession of the appellant and from alienating the share of the appellant in the suit properties. In the alternative, a prayer was made for passing a decree for possession. On 23rd November, 1985, the plaint in both the suits was amended by incorporating the relief of declaration that the power of attorney and sale deeds were null and void. A prayer was also incorporated for a money decree for the

share of the appellant in the compensation awarded in respect of a tube well on the suit properties.

4. Sudarshan Kumar contested the suit along with other respondents. It is the case of Sudarshan Kumar that he was employed in Muscat and was earning a large income. It is the further case of Sudarshan Kumar that at the relevant time, the appellant was unemployed. From time to time, he remitted amounts to the appellant from his own earnings. Sudarshan Kumar had negotiated for purchasing the suit properties. According to his case, the suit properties were to be purchased only in his name. His contention is that while getting the sale deeds executed on 12th August 1976 and 19th October 1976, the appellant got his name incorporated as a purchaser along with Sudarshan Kumar. According to the case of Sudarshan Kumar, the appellant was a benamidar. In short, the contention of Sudarshan Kumar is that he is the sole owner of the suit properties. His further contention is that by writing a letter to him on 15th April 1980, the appellant accepted his sole ownership and that is how the appellant voluntarily executed the power of attorney dated 23rd March 1980 which was duly registered under the Indian Registration Act, 1908 under which Sudarshan Kumar was appointed as his

attorney in respect of the suit properties. Therefore, the contention of Sudarshan Kumar is that the sale deeds are legal and valid. Apart from these contentions on merits, it was contended by Sudarshan Kumar that the prayers for declaration incorporated subsequently by way of amendment in relation to the two sale deeds and the power of attorney were barred by limitation. It was contended that even the prayer made for grant of his share in the compensation in respect of tube well was barred.

5. The Trial Court dismissed the suits filed by the appellant. The Trial Court held that the suit lands were intended to be purchased only by Sudarshan Kumar and that is how the original sale deeds were in possession of Sudarshan Kumar. The Trial Court accepted the contention that he was the exclusive owner and the appellant was the benamidar. The Trial Court upheld the contention of Sudarshan Kumar regarding legality and validity of the power of attorney and both the sale deeds which were the subject matter of challenge. Trial Court held that as Sudarshan Kumar was the only owner of the suit properties, the appellant was disentitled to any relief. The Trial Court also held that the prayer for grant of a share in compensation in

respect of the tube well was barred by provisions of Rule 2 of Order II of the Code of Civil Procedure, 1908.

6. Being aggrieved by the judgment of the Trial Court, the appellant preferred two appeals before the District Court. The appeals were partly allowed. The District Court held that Sudarshan Kumar did not step into witness box and except for the bald statement made by the attorney of Sudarshan Kumar in his evidence, nothing was placed on record to show that the entire sale consideration for acquiring suit properties was paid by him. The District Court held that as the case of Sudarshan Kumar was that the money was transmitted from a foreign country to the appellant, it was easily possible for Sudarshan Kumar to adduce documentary evidence to show that money was transferred to the appellant as alleged in his written statement. Therefore, the District Court accepted that both the appellant and Sudarshan Kumar were the joint owners of the suit properties. The District Court also held that the sons of Sudarshan Kumar and the wife of Sudarshan Kumar had a notice that the appellant had one half share in the suit properties as there was a recital to that effect in the sale deeds executed by Sudarshan Kumar. It was further held that

Sudarshan Kumar, his sons and his wife failed to adduce any evidence to show that the price was paid as mentioned in the impugned sale deeds. The District Court observed that while executing the sale deed in favour of his wife, Sudarshan Kumar described his wife as the daughter of one Mehar Chand and that she has not been described as his wife. The District Court held that the sale deeds dated 10th April 1981 were without consideration. Therefore, the District Court decreed the suit by granting joint possession by setting aside the sale deeds dated 10th April 1981. However, the prayer for compensation in respect of the tube well was rejected.

7. The respondents filed separate second appeals before the High Court which have been allowed by the impugned Judgment and order. The High Court upheld the finding of the District Court that Sudarshan Kumar failed to adduce evidence to prove that he remitted money from foreign country to the appellant. Therefore, the High Court held that the appellant and Sudarshan Kumar were the joint owners of the suit properties. The High Court held that the power of attorney was valid. The High Court further held that the suits for declaration of invalidity of the sale deeds were barred by limitation as the said prayers were belatedly incorporated on 23rd November 1985. The High Court held

that the sale consideration mentioned in the sale deeds executed on 10th April 1981 of Rs.5,500/- and Rs.6,875/- respectively was not exorbitant and, therefore, the amounts were not out of reach of the sons of Sudarshan Kumar and wife of Sudarshan Kumar. As the High Court held the appellant to be the owner of half share in the suit properties and as the power of attorney was held to be valid, by the impugned Judgment and order, it directed Sudarshan Kumar to pay the share of the appellant in the consideration shown under the sale deeds dated 10th April 1981 with 12% interest from the date of execution of the sale deeds. The said Judgment and order has been impugned in these appeals.

SUBMISSIONS OF THE APPELLANT

8. Shri Neeraj Kumar Jain, the learned Senior Counsel appearing for the appellant submitted that even the High Court accepted that there was no evidence adduced to show that the purchasers under the sale deeds dated 10th April 1981 had paid consideration to Sudarshan Kumar. He submitted that finding of the High Court that the consideration amounts were not out of reach of the purchasers is

without any basis as it was not the case of the Sudarshan Kumar that his wife and minor sons had any source of income at the relevant time.

9. The learned Senior Counsel further submitted that even in the unamended plaints, there were specific assertions made that the sale deeds were null and void as the same were without consideration. He pointed out that the unamended plaints contained a specific contention that the transactions of sale were sham transactions. It was specifically pleaded that the market value of the suit properties was more than Rs.30,000/- and there was no occasion to sell the suit properties at the price shown in the sale deeds. He pointed out that it was pleaded in the unamended plaints that the minor sons of Sudarshan Kumar and his wife had no source of earning. He submitted that as the sale deeds were without consideration, the same were void. He pointed out that the suit for injunction was based on the title pleaded by the appellant as a joint owner of the suit properties and therefore, the appellant continues to be the owner of his share in the suit properties as the sale deeds are void and sham. He urged that it was not necessary to amend the plaint and to seek a specific declaration regarding the invalidity of the power of attorney and sale deeds. He pointed out that the High Court has committed a manifest

error while recording a finding on bar of limitation. He invited our attention to paragraph 28 of the impugned Judgment which proceeds on the footing that the appellant had challenged the legality and validity of sale deeds dated 12th March 1976 and 19th October 1976. He urged that the specific challenge was two sale deeds dated 10th April 1981. He submitted that the High Court has erroneously disturbed the decree passed by the District Court.

SUBMISSIONS OF THE RESPONDENTS

10. The learned Senior Counsel Shri Surjeet Singh representing the respondents invited our attention to the letter dated 5th April 1980 (Exhibit D3) addressed by the appellant to Sudarshan Kumar. He pointed out that in the said letter, the appellant accepted that the suit lands were purchased out of the amounts remitted by Sudarshan Kumar and in fact, the appellant agreed to transfer the suit properties in the name of Sudarshan Kumar. He would, therefore, submit that the appellant has no right, title and interest in the suit properties. He submitted that in the suits filed in May 1983, the appellant did not pray for any declaration regarding the sale deeds and the power of attorney. He pointed out that only in November 1985, the plaint was amended to

incorporate the prayers for declaration as regards the power of attorney dated 28th March 1980 and the sale deeds dated 10th April 1981. He would, therefore, submit that the prayers for declaration were barred by limitation. The learned Senior Counsel submitted that without getting a declaration regarding the invalidity or nullity of sale deeds, the appellant cannot get any relief. He submitted that the appellant did not discharge initial burden on him by stepping in to witness box. He would, therefore, submit that no interference is called for with the impugned Judgment and order.

11. After the judgment in these appeals was reserved on 11th November 2021, the respondents have filed written submissions on 16th November 2021 contending that the issue whether the purchasers under the sale deeds were the *bona fide* purchasers was redundant. He urged that the contention that the constituted attorney of Sudarshan Kumar was not a competent witness was not raised by the appellant.

CONSIDERATION OF SUBMISSIONS AND REASONS

12. We have given our careful consideration to the submissions. The case made out by the respondents in their written statement was

that Sudarshan Kumar, who was employed abroad, remitted large amounts to the appellant, his younger brother, who was unemployed at that time. The case of the respondents was that Sudarshan Kumar paid the entire consideration for acquiring the suit properties under the sale deeds of 1976. The contention of the respondents is that instead of purchasing suit properties only in the name of Sudarshan Kumar, the appellant incorporated his name in the sale deeds along with Sudarshan Kumar. It is an admitted position that the said Sudarshan Kumar did not step into the witness box. Moreover, there is a finding recorded by the District Court that no evidence was adduced by Sudarshan Kumar to prove that certain amounts were transmitted by him from a foreign country to the appellant. This finding has not been disturbed by the High Court. The modified decree passed by the High Court by the impugned Judgment and order proceeds on the basis of the finding that the appellant and Sudarshan Kumar were the joint owners of the suit properties as Sudarshan Kumar failed to establish his claim that he was the sole owner of the suit properties. The respondents have not chosen to challenge the impugned Judgment and order and therefore, the finding that the appellant and Sudarshan Kumar were the joint owners of the suit properties has become final.

Hence, reliance placed by the respondents on the letter at Exhibit D3 will not help them.

13. A copy of the unamended plaint in one of the two suits is placed on record along with the counter affidavit. In paragraph 3 of the unamended plaint, there is a specific pleading that both the sale deeds of 10th April 1981 were null and void as the same were without consideration. In the plaint, it is specifically pleaded that suit properties which were worth more than Rs.30,000/- were shown to have been sold at a throwaway price. The prayer for injunction was made in the unamended plaint on the basis of the title claimed by the appellant as a joint owner of the suit properties along with Sudarshan Kumar.

14. Admittedly, there is no evidence adduced on record by Sudarshan Kumar that his minor sons had any source of income at the relevant time and that they paid him consideration as mentioned in the sale deed. Similarly, no evidence was adduced to show that Sudarshan Kumar's wife had any source of income and that she paid consideration mentioned in the sale deed. An issue was specifically framed by the Trial Court on the validity of the sale deeds. There is a

specific finding recorded by the District Court that there was no evidence adduced to show that Sudarshan Kumar's wife and minor children paid consideration as shown in the sale deeds. In fact, before the District Court, it was pleaded that Sudarshan Kumar's wife had brought some money from her parents. The District Court in paragraph 11 of the judgment held that no evidence was adduced to prove the said contention. Therefore, there is a categorical finding recorded in the same paragraph by the District Court that Sudarshan Kumar, by taking advantage of the power of attorney, transferred the suit lands to his own minor sons and his wife without any consideration. The High Court has not disturbed the finding recorded by the District Court regarding the failure of the respondents to adduce evidence regarding the payment of consideration under the sale deeds dated 10th April 1981. The High Court in paragraph 29 merely observed that the sale consideration of Rs.5,500/- and Rs.6,875/- was not exorbitant and was not out of reach of Sudarshan Kumar's sons and wife. Perhaps, the High Court has ignored that it was considering a case of sale deeds of the year 1981 and that the purchasers under one of two sale deeds were minor sons of Sudarshan Kumar and it was not even pleaded that they had any source of income. The same

is the case with the sale deed executed by Sudarshan Kumar in favour of his wife. Thus, undisputed factual position is that the respondents failed to adduce any evidence to prove that the minor sons had any source of income and that they had paid the consideration payable under the sale deed. They did not adduce any evidence to show that Sudarshan Kumar's wife was earning anything and that she had actually paid the consideration as mentioned in the sale deed.

15. Section 54 of the Transfer of Property Act, 1882 (for short "the TP Act") reads thus:

> **"54**. "**Sale**" **defined**.—"Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.
>
> **Sale how made**.—Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.
>
> In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.
>
> Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

> **Contract for sale**.—A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties.
>
> It does not, of itself, create any interest in or charge on such property."

Hence, a sale of an immovable property has to be for a price. The price may be payable in future. It may be partly paid and the remaining part can be made payable in future. The payment of price is an essential part of a sale covered by section 54 of the TP Act. If a sale deed in respect of an immovable property is executed without payment of price and if it does not provide for the payment of price at a future date, it is not a sale at all in the eyes of law. It is of no legal effect. Therefore, such a sale will be void. It will not effect the transfer of the immovable property.

16. Now, coming back to the case in hand, both the sale deeds record that the consideration has been paid. That is the specific case of the respondents. It is the specific case made out in the plaints as originally filed that the sale deeds are void as the same are without consideration. It is pleaded that the same are sham as the purchasers who were minor sons and wife of Sudarshan Kumar had no earning capacity. No evidence was adduced by Sudarshan Kumar about the

payment of the price mentioned in the sale deeds as well as the earning capacity at the relevant time of his wife and minor sons. Hence, the sale deeds will have to be held as void being executed without consideration. Hence, the sale deeds did not affect in any manner one half share of the appellant in the suit properties. In fact, such a transaction made by Sudarshan Kumar of selling the suit properties on the basis of the power of attorney of the appellant to his own wife and minor sons is a sham transaction. Thus, the sale deeds of 10th April 1981 will not confer any right, title and interest on Sudarshan Kumar's wife and children as the sale deeds will have to be ignored being void. It was not necessary for the appellant to specifically claim a declaration as regards the sale deeds by way of amendment to the plaint. The reason being that there were specific pleadings in the plaints as originally filed that the sale deeds were void. A document which is void need not be challenged by claiming a declaration as the said plea can be set up and proved even in collateral proceedings.

Hence, the issue of bar of limitation of the prayers for declaration incorporated by way of an amendment does not arise at all. The

additional submissions made by the respondents on 16th November 2021 have no relevance at all.

17. As no title was transferred under the said sale deeds, the appellant continues to have undivided half share in the suit properties. That is how the District Court passed the decree holding that the appellant is entitled to joint possession of the suit properties along with Sudarshan Kumar. Therefore, for the reasons recorded above, by setting aside the impugned Judgment and order of the High Court, the decree passed by the District Court deserves to be restored.

18. Accordingly, the appeals are allowed. The impugned Judgment of the High Court is set aside and common judgment and order dated 21st May, 1988 passed by the Additional District Judge, Ropar, Punjab in Civil Appeal bearing No.31/256/23.07.1986 and Civil Appeal bearing No.34/257 /23.07.1986 is hereby restored.

19. There will be no order as to costs.

……J
(AJAY RASTOGI)

……J
(ABHAY S. OKA)

New Delhi;
November 22, 2021.