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KALIAPERUMAL

V.

RAJAGOPAL & ANR.

Civil Appeal No. 5800 of 2002

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FEBRUARY 20, 2009

[R.V. RAVEENDRAN AND J.M. PANCHAL, JJ.]

Transfer of Property Act, 1882 :

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ss.54 and 55(4)(b) – Sale – Intention of the parties – Determination of – Registration of deed – Effect of – Held: Though registration is prima facie proof of an intention to transfer the property, it is not proof of operative transfer if payment of consideration (price) is condition precedent for passing of the property – On facts, the parties intended that ownership of property would be transferred to appellant only after receipt of entire consideration by respondent-vendors, as condition precedent – The title was intended to pass only on payment of balance consideration of Rs.40,000/- in presence of Sub-Registrar – However, no amount was tendered or paid by appellant to respondents in presence of Sub-Registrar – Therefore, the title in fact did not pass either on execution or registration of sale deed – The title was intended to pass only after payment of full price, which is further confirmed from the fact that though the sale deed recited that the purchaser was entitled to hold, possess and enjoy the scheduled properties from date of sale, neither possession of the properties nor title deeds were delivered to appellant either on date of sale or thereafter – Evidence Act, 1872 – s.92.

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Appellant filed suit contending that he acquired title to the suit properties when the sale deed entered between him and the respondents-vendor was duly registered and sought entitlement to declaration of his title as well as possession of the suit properties. The respondents contended that as the appellant had not paid the balance

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consideration of Rs.40,000/- as mentioned in the sale deed, the title never passed to the appellant and therefore, the suit for declaration of title to the suit properties and possession thereof was not maintainable. The trial court decreed the suit. The first appellate court also held that title of the appellant to the suit properties was established in view of the execution of sale deed and its registration, but held that the appellant was entitled to possession only on deposit of Rs.40,000/-. Respondents filed second appeal. The High Court set aside the decree passed in favour of the appellant and dismissed the suit filed by him.

In appeal to this Court, the question which arose for consideration was whether title to the disputed properties passed on to the appellant when the sale deed was registered.

Dismissing the appeal, the Court

HELD:1. Sale is defined as being a transfer of ownership for a price. In a sale there is an absolute transfer of all rights in the properties sold. No rights are left in the transferor. The price is fixed by the contract antecedent to the conveyance. Price is the essence of a contract of sale. There is only one mode of transfer by sale in regard to immovable property of the value of Rs.100/- or more and that is by a registered instrument. [Para 8] [821; 822-H]

1.2. Payment of entire price is not a condition precedent for completion of the sale by passing of title, as s.54 of Transfer of Property Act, 1882 defines 'sale' as a transfer of ownership in exchange for a price paid or promised or part paid and part promised. If the intention of parties was that title should pass on execution and registration, title would pass to the purchaser even if the sale price or part thereof is not paid. In the event of non-payment of price (or balance price as the case may be) thereafter, the remedy of the vendor is only to sue for the balance price. He cannot avoid the sale. He is, however,

A entitled to a charge upon the property for the unpaid part
of the sale price where the ownership of the property has
passed to the buyer before payment of the entire price,
under s.55(4)(b) of the Act. Normally, ownership and title
to the property will pass to the purchaser on registration
B of the sale deed with effect from the date of execution of
the sale deed. But this is not an invariable rule, as the true
test of passing of property is the intention of parties. [Para
8] [822-B-C]

C 1.3. Though registration is prima facie proof of an
intention to transfer the property, it is not proof of operative
transfer if payment of consideration (price) is a condition
precedent for passing of the property. The answer to the
question whether the parties intended that transfer of the
ownership should be merely by execution and registration
D of the deed or whether they intended the transfer of the
property to take place, only after receipt of the entire
consideration, would depend on the intention of the
parties. Such intention is primarily to be gathered and
determined from the recitals of the sale deed. When the
recitals are insufficient or ambiguous the surrounding
E circumstances and conduct of parties can be looked into
for ascertaining the intention, subject to the limitations
placed by s.92 of Evidence Act. [Para 8] [822-F]

F 2. In the present case, the parties intended that
ownership of the property would be transferred to the
appellant only after receipt of the entire consideration by
the vendors, as a condition precedent. The operative
portion of the sale deed clearly states that the vendors
have agreed to receive Rs.40,000/- in the presence of the
G Sub-Registrar on the date of the registration of the sale
deed and that in consideration of payment to be so made,
the property was being conveyed to the purchaser. This
makes it clear that the title was intended to pass only on
the payment of balance consideration of Rs.40,000/- in the
H presence of the Sub-Registrar. This is also supported by

the evidence of DW-1 to DW-4. The Sub-Registrar has also clearly recorded that no amount was tendered or paid by the purchaser to the vendors in his presence. Therefore title in fact did not pass either on execution or registration of the sale deed. There is yet another circumstance to show that title was intended to pass only after payment of full price. Though the sale deed recites that the purchaser is entitled to hold, possess and enjoy the scheduled properties from the date of sale, neither the possession of the properties nor the title deeds were delivered to the purchaser either on the date of sale or thereafter. The possession of the suit properties purported to have been sold under the sale deed was never delivered to the appellant and continued to be with the respondents. In fact, the appellant, therefore, sought a decree for possession of the suit properties from the respondents with mesne profits. If really the intention of the parties was that the title to the properties should pass to the appellant on execution of the deed and its registration, the possession of the suit properties would have been delivered to the appellant. [Para 9] [823-C]

3. All the three courts have also concurrently found that the appellant had pleaded a false case that he had paid a part of the balance consideration, that is, Rs.25,000/- to the respondents to enable them to purchase lorry. This case of the appellant was disbelieved by the trial court as well as the first appellate court which is the final court of facts. That finding was not challenged by the appellant before the High Court. From the averments made in the plaint it is evident that the appellant was ready and willing to make payment of only Rs.15,000/- and not Rs.40,000/-. He had never shown his readiness or willingness to make payment of Rs.40,000/- which was the balance of the consideration and which had to be paid only in the presence of the Sub-Registrar, as mentioned in the deed. Therefore, the first respondent who was present before

A the Sub-Registrar on behalf of the respondents, was justified in not signing or affixing his thumb mark in the endorsement of registration to be made on the deed, by the Sub-Registrar. [Para 10] [824-A]

B 4. Therefore, on the facts and in the circumstances of the case, the parties really intended that title of ownership to the suit properties would pass to the purchaser, only after payment of full consideration by the purchaser to the vendor as a condition precedent. Parties did not intend that there should be transfer of ownership merely on execution and registration of the deed. The trial court and first appellate court having misinterpreted the legal position, the High Court rightly set aside the decree passed in favour of the appellant and dismissed the suit. [Para 11] [824-E-F]

D CIVILAPPELLATE JURISDICTION : Civil Appeal No. 5800 of 2002

E From the Judgement and Order dated 27.11.2001 of the Hon'ble High Court of Judicature at Madras in Second Appeal No. 135 of 1990.

S. Nanda Kumar, Satish Kumar, G. Ananda Selvam, S. Babu, Rakesh K. Sharma for the Appellants.

F V. Prabhakar, Ramjee Prasad, M.K.D. Namboodiri, Ashok K. Sadhu Khan, for the Respondent.

The Judgement of the Court was delivered by

J.M. PANCHAL, J.

G 1. The instant appeal is directed against judgment dated November 27, 2001, rendered by the learned single Judge of the High Court of Judicature at Madras in Second Appeal No. 1435 of 1990 by which the decree dated January 23, 1987, passed by the learned Subordinate Judge of Villupuram declaring the appellant to be owner of the disputed property and directing the respondents to hand over possession of the same to the appellant with mesne profits at the rate of Rs.2000/

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- per month with proportionate costs, and affirmed (subject to the modification that appellant will be entitled to possession only on deposit of Rs.40,000/-) by the learned District Judge, South Arcot District at Cuddalore vide judgment dated December 15, 1988, rendered in Appeal No. 55 of 1987, is set aside.

2. The facts emerging from the record of the case are as under: -

The suit properties originally belonged to the family of the respondents. First respondent (for himself and his minor sons) and the second respondent sold the properties to the appellant for a consideration of Rs.43,000/- by a deed dated June 26, 1983. Out of the sale consideration of Rs.43,000/- a sum of Rs.3,000/- was to be appropriated towards the discharge of the mortgage executed by the respondents in favour of the appellant. The balance of Rs.40,000/- was to be paid before the Sub-Registrar at the time of registration of the sale deed. It is the case of the appellant that before the document could be presented for registration, he paid to the respondents a sum of Rs.25,000/- on 21.7.1983 as they required that amount for purchasing a lorry, therefore, at the time of registration of the sale deed he was required to pay only the balance of Rs.15,000/- to the respondents. It is the case of the appellant that as the respondents had denied payment of Rs.25,000/- to them, he was left with no other option but to present the document for registration before the Sub-Registrar on 21.10.1983. On presentation of the document for registration, the Sub-Registrar issued summons to the respondents pursuant to which the first respondent appeared before him. The first respondent admitted execution of the deed but refused to put his thumb impression or to sign the endorsement to be made on the deed in token of admitting execution, on the ground that the respondents were not paid the remaining consideration of Rs.40,000/- as stipulated in the deed. The Sub-Registrar registered the document on October 26, 1983. According to the appellant, ever since the date of the execution of the sale deed and the date of its registration, he was ready to tender the balance of

A consideration of Rs.15,000/- but the respondents were
unreasonably refusing to receive the same and, therefore, he
served a legal notice calling upon them to hand over possession
of the properties sold and pay mesne profits. It is the case of
the appellant that after receiving part of the consideration, the
B respondents did not deliver possession of the properties to the
appellant nor paid mesne profits. Therefore, the appellant
instituted O.S. No. 144 of 1985 in the Court of learned District
Munsiff of Villupuram seeking declaration of title to the suit
properties. The appellant also prayed to direct the respondents
C to hand over possession and to pay past mesne profits of
Rs.3,000/- and for an enquiry into future mesne profits.

3. On service of summons the respondents appeared and
contested the suit filed by the appellant. They denied having
received Rs.25,000/- as advance. In short the stand taken by
D the respondents was that as the appellant had not paid the
balance consideration of Rs.40,000/- as mentioned in the deed
dated June 26, 1983, the title never passed to the appellant
and, therefore, the suit for declaration of title to the suit properties
and possession thereof was not maintainable.

E 4. Necessary issues for determination were framed by the
trial court. The parties led evidence in support of their respective
claims. On appreciation of evidence adduced by the parties
the trial court held that the appellant had failed to prove that he
had paid a sum of Rs.25,000/- to the respondents on 21.7.1983.
F The trial court, however, held that the appellant had acquired
title to the suit properties when the sale deed dated June 26,
1983 was duly registered and was entitled to declaration of his
title as well as possession of the suit properties with mesne
profits. According to the trial court, remedy of the respondents
G was only to sue the appellant for recovery of the consideration
mentioned in the deed but they were estopped from denying
his title. Therefore, the trial court decreed the suit by judgment
dated January 23, 1987.

H 5. Feeling aggrieved the respondents preferred Appeal

No. 55 of 1987 in the District Court South Arcot District at Cuddalore. The learned District Judge also held that title of the appellant to the suit properties was established in view of the execution of sale deed and its registration, but he was not entitled to mesne profits. After holding that the appellant had failed to prove the payment of Rs.25,000/- he held that the appellant was due in respect of the balance consideration of Rs.40,000/- to the respondents. The learned District Judge clarified that the appellant would be entitled to possession of the suit properties only after he deposited the said Rs.40,000/- and that the respondents will be entitled to draw the said amount from the court. Thus the learned District Judge partly allowed the appeal of the respondents by judgment and order dated December 15, 1988.

6. Thereupon the respondents invoked jurisdiction of the High Court by way of filing second appeal under Section 100 of the Code of Civil Procedure, 1908. The High Court was of the view that the intention of the parties was that title would not pass to the appellant till the full consideration was paid by him to the respondents and that title to the suit properties never passed to the appellant as he had not paid full consideration to the respondents. Therefore, the High Court set aside the decree passed by the trial court, as confirmed by the first appellant court, and dismissed the suit filed by the appellant, by its judgment dated November 27, 2001 giving rise to the instant appeal by special leave.

7. We have heard the learned counsel for the parties at length and considered the evidence – oral and documentary, forming part of the record. The question posed for our consideration is whether title to the disputed properties passed to the appellant when the sale deed dated 26.6.1983 was registered on October 26, 1983, though admittedly no amount was paid towards consideration to the respondents.

8. Sale is defined as being a transfer of ownership for a price. In a sale there is an absolute transfer of all rights in the

A properties sold. No rights are left in the transferor. The price is fixed by the contract antecedent to the conveyance. Price is the essence of a contract of sale. There is only one mode of transfer by sale in regard to immovable property of the value of Rs. 100/- or more and that is by a registered instrument. It is now well settled that payment of entire price is not a condition precedent for completion of the sale by passing of title, as Section 54 of Transfer of Property Act, 1882 ('Act' for short) defines 'sale' as a transfer of ownership in exchange for a price paid or promised or part paid and part promised. If the intention of parties was that title should pass on execution and registration, title would pass to the purchaser even if the sale price or part thereof is not paid. In the event of non-payment of price (or balance price as the case may be) thereafter, the remedy of the vendor is only to sue for the balance price. He cannot avoid the sale. He is, however, entitled to a charge upon the property for the unpaid part of the sale price where the ownership of the property has passed to the buyer before payment of the entire price, under Section 55(4)(b) of the Act. Normally, ownership and title to the property will pass to the purchaser on registration of the sale deed with effect from the date of execution of the sale deed. But this is not an invariable rule, as the true test of passing of property is the intention of parties. Though registration is prima facie proof of an intention to transfer the property, it is not proof of operative transfer if payment of consideration (price) is a condition precedent for passing of the property. The answer to the question whether the parties intended that transfer of the ownership should be merely by execution and registration of the deed or whether they intended the transfer of the property to take place, only after receipt of the entire consideration, would depend on the intention of the parties. Such intention is primarily to be gathered and determined from the recitals of the sale deed. When the recitals are insufficient or ambiguous the surrounding circumstances and conduct of parties can be looked into for ascertaining the intention, subject to the limitations placed by Section 92 of Evidence Act.

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9. In this case, the execution of the sale deed on June 26, 1983 is not in dispute. The said instrument was presented for registration on October 21, 1983 and registered on October 26, 1983, as the first respondent/vendor appeared before the Sub-Registrar and admitted that the vendors had executed the documents, but refused to make an endorsement to that effect on the deed as the vendors had not received the balance consideration of Rs.40,000/-. Applying the above mentioned principles to the facts of this case, we find that the parties intended that ownership of the property would be transferred to the appellant only after receipt of the entire consideration by the vendors, as a condition precedent. The operative portion of the sale deed clearly states that the vendors have agreed to receive Rs.40,000/- in the presence of the Sub-Registrar on the date of the registration of the sale deed and that in consideration of payment to be so made, the property was being conveyed to the purchaser. This makes it clear that the title was intended to pass only on the payment of balance consideration of Rs.40,000/- in the presence of the Sub-Registrar. This is also supported by the evidence of DW-1 to DW-4. The Sub-Registrar has also clearly recorded that no amount was tendered or paid by the purchaser to the vendors in his presence. Therefore title in fact did not pass either on execution or registration of the sale deed. There is yet another circumstance to show that title was intended to pass only after payment of full price. Though the sale deed recites that the purchaser is entitled to *hold, possess and enjoy* the scheduled properties from the date of sale, neither the possession of the properties nor the title deeds were delivered to the purchaser either on the date of sale or thereafter. It is admitted that possession of the suit properties purported to have been sold under the sale deed was never delivered to the appellant and continued to be with the respondents. In fact, the appellant, therefore, sought a decree for possession of the suit properties from the respondents with mesne profits. If really the intention of the parties was that the title to the properties should pass to the appellant on execution of the deed and its registration, the possession of the *suit* properties would have been delivered to the appellant.

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A 10. All the three courts have also concurrently found that
the appellant had pleaded a false case that he had paid a part
of the balance consideration, that is, Rs.25,000/- on July 21,
2003 to the respondents to enable them to purchase lorry. This
B case of the appellant was disbelieved by the trial court as well
as the first appellate court which is the final court of facts. That
finding was not challenged by the appellant before the High
Court. From the averments made in the plaint it is evident that
the appellant was ready and willing to make payment of only
C Rs.15,000/- and not Rs.40,000/-. He had never shown his
readiness or willingness to make payment of Rs.40,000/- which
was the balance of the consideration and which had to be paid
only in the presence of the Sub-Registrar, as mentioned in the
deed. Therefore, the first respondent who was present before
the Sub-Registrar on behalf of the respondents on October 26,
D 1983, was justified in not signing or affixing his thumb mark in
the endorsement of registration to be made on the deed, by the
Sub-Registrar.

E 11. Therefore, on the facts and in the circumstances of the
case, we are of the considered view that the parties really
intended that title of ownership to the suit properties would pass
to the purchaser, only after payment of full consideration by the
purchaser to the vendor as a condition precedent. Parties did
not intend that there should be transfer of ownership merely on
F execution and registration of the deed. The trial court and first
appellate court having misinterpreted the legal position, the High
Court rightly set aside the decree passed in favour of the
appellant and dismissed the suit. No ground is made out by the
appellant to interfere with the decision of the High Court.
Therefore, the appeal, which is devoid of merits, deserves
G dismissal.

12. For the foregoing reasons the appeal fails and is
dismissed. There shall be no order as to costs.

B.B.B.

Appeal dismissed