

SALE DEEDS EXECUTED WITHOUT CONSIDERATION ARE VOID

INTRODUCTION:

*The Apex Court in its decision in **Kewal Krishnan vs Rajesh Kumar and Others**¹ held that if a sale deed in respect of an immovable property was executed without payment of price or if the sale deed did not provide for the payment of price at a future date, it could not be a sale at all in the eyes of law. The sale deed would be of no legal effect and such a sale would be void and would not effect the transfer of an immovable property.*

FACTS:

One Kewal Krishnan (“**Appellant**”) and one Sudarshan Kumar (being one of the Respondents) jointly acquired certain properties vide sale deeds dated 12th August, 1976 and 19th October, 1976 (“**suit properties**”).

The Appellant executed a power of attorney in favour of Sudarshan Kumar on 28th March, 1980 (“**said PoA**”) in respect of the suit properties.

Acting on the basis of the said PoA, two sale deeds were executed by Sudarshan Kumar on 10th April, 1981, (“**said Sale Deeds**”) viz. one in favour of his minor sons under which a part of the suit properties were conveyed and the other in favour of his wife under which the remainder part of the suit properties were conveyed.

On 10th May, 1983, the Appellant instituted two suits for injunction to restrain the Defendants therein (being the Respondents in the subject matter) from interfering with the possession and from alienating the share of the Appellant in the suit properties. In the alternate, a prayer was also sought for passing a decree for possession.

The Trial Court dismissed the suits filed by the Appellant and held that Sudarshan Kumar was the only owner of the suit properties. The Trial

Court further held that the Appellant was disentitled to any relief.

Being aggrieved by the judgment of the Trial Court, the Appellant preferred two appeals (one against Sudarshan Kumar and his two sons and the other against Sudarshan Kumar and his wife) before the District Court, Ropar, Punjab. The District Court opined that both, the Appellant and Sudarshan Kumar were the joint owners of the suit properties. The District Court by its common judgement and order dated 21st May, 1988, held that the said Sale Deeds were executed without consideration. The District Court granted joint possession of the suit properties by setting aside the said Sale Deeds.

Thereafter, the Respondents filed separate second appeals before the High Court of Punjab and Haryana at Chandigarh.

The High Court on hearing the parties held the PoA to be valid and that the Appellant was the owner of half share in the suit properties. The High Court, by its judgment and order, directed Sudarshan Kumar to pay the Appellant his half share in the suit properties, being the consideration shown under the said Sale Deeds, along with 12% interest from the date of

¹ Civil Appeal Nos. 6989-6992 of 2021

execution of the said Sale Deeds. (“**impugned order**”)

Being aggrieved by the impugned judgment and order of the High Court, the Appellant challenged the same before the Apex Court.

ISSUE FOR CONSIDERATION:

The main issue for consideration before the Apex Court was:

Whether the said Sale Deeds were executed without consideration, and if yes, then would the same be held as void?

JUDGMENT:

The Apex Court observed that the impugned order proceeded on the basis that the Appellant and Sudarshan Kumar were the joint owners of the suit properties as Sudarshan Kumar had failed to establish his claim that he was the sole owner of the suit properties. The Respondents did not challenge the impugned order and therefore, the finding that the Appellant and Sudarshan Kumar were the joint owners of the suit properties had become final.

The Apex Court further observed that it was an undisputed factual position that the Respondents failed to adduce any evidence to prove that the minor sons of Sudarshan Kumar had any source of income or that they had paid the consideration payable under the said Sale Deeds. No evidence was adduced to show that Sudarshan Kumar’s wife was earning or that she had actually paid the consideration as mentioned in the said Sale Deeds.

The Apex Court referred to section 54 of the Transfer of Property Act, 1882, (“**said Act**”) and was of the view that a sale of an immovable property had to be for a price. The price may be payable in future or it may be partly paid in the

present and the remaining part may be made payable in future. The payment of price was an essential part of a sale covered under section 54 of the said Act. If a sale deed in respect of an immovable property was executed without payment of price and if it did not provide for the payment of price at a future date, it would not be a sale in the eyes of law. It would be of no legal effect. Therefore, such a sale would be void and would not effect the transfer of the immovable property.

The Apex Court also observed that no evidence was adduced by Sudarshan Kumar on the payment of the price mentioned in the said Sale Deeds or the earning capacity of his wife and minor sons at the relevant time.

The Apex Court held that the said Sale Deeds were void as they were executed without consideration. The Apex Court further held that the said 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 said PoA of the Appellant to his own wife and minor sons was a sham transaction. Thus, the said Sale Deeds would not confer any right, title or interest on Sudarshan Kumar’s wife and children and the said Sale Deeds would have to be ignored as being void.

Further, as no title was transferred under the said Sale Deeds, the Appellant continued to have undivided half share in the suit properties.

The Apex Court allowed the appeals for the reasons recorded above. The impugned order was set aside and the common judgment and order dated 21st May, 1988, passed by the Additional District Judge, Ropar, Punjab was restored.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.