



2024:CGHC:47830

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Order Reserved on 9.11.2024

Order delivered on 04/12/2024

FA No. 7 of 2022

1. Jairam S/o Late Shri Mayaram Gond Aged About 46 Years
R/o Village Salhebhat, Post Salhebhat, Tahsil Keshkal,
District Kanker Chhattisgarh.
2. Jablu Ram S/o Late Shri Mayaram Gond Aged About 39
Years R/o Village Salhebhat, Post Salhebhat, Tahsil Keshkal,
District Kanker Chhattisgarh.
3. Siyaram S/o Late Shri Mayaram Gond Aged About 29 Years
R/o Village Salhebhat, Post Salhebhat, Tahsil Keshkal,
District Kanker Chhattisgarh.
4. Jayawati D/o Late Shri Mayaram Gond Aged About 40 Years
R/o Village Salhebhat, Post Salhebhat, Tahsil Keshkal,
District Kanker Chhattisgarh.
5. Bharti Markam W/o Jairam Aged About 46 Years R/o Village
Salhebhat, Post Salhebhat, Tahsil Keshkal, District Kanker
Chhattisgarh.

... Appellants

versus

1. Durga Bai D/o Ganpat Gond Aged About 41 Years R/o Village
Maradev, Post Gangrel, Tahsil And District Dhamtari
Chhattisgarh.

2. Dharmu Sahu S/o Jaggu Sahu Aged About 55 Years R/o Nayapara, Gokulpur, Dabripura, Dhamtari Tahsil And District Dhamtari Chhattisgarh.
3. State of Chhattisgarh Through Collector, Dhamtari District Dhamtari Chhattisgarh.

... Respondents

For Appellants	: Mr. Ravindra Sharma, Advocate
For Respondent No.1	: Mr. RS Patel & Mr. Palash Agrawal, Advocates
For Respondent No.2	: None though served.
For Respondent No.3	: Mr. Topilal Bareth, Panel Lawyer

SB: Hon'ble Mr. Justice Parth Prateem Sahu

C A V Order

1. Appellants have preferred this first appeal against the judgment dated 30.11.2021 passed in Civil Suit No.1A/2019 whereby learned Additional District Judge Dhamtari has decreed suit of plaintiff / respondent No.1 for declaration, recovery of money and injunction.
2. During pendency of suit, original plaintiff No.2- Binjhwarin Bai, mother of plaintiff No.1, and defendant No.1 Punai Bai, have died. For the sake of convenience, the parties shall be referred herein after as per their status before the trial Court.
3. Facts of the case, in brief, are that plaintiffs have filed a civil suit for declaration, recovery of balance amount of sale consideration along with interest and for grant of injunction. Plaintiffs have averred that they are owners of the land bearing Khasra No.1/6 area 1.25 acre situated at P.H.

No.18/24 village Gokulpur, Tahsil and District Dhamtari, which will be referred hereinafter as 'the suit land'. Plaintiffs orally agreed to sell the suit land to defendant No.1 and 2 at a consideration of Rs.8,00,000/-. At the time of execution of sale deed, it was orally agreed between the parties that entire amount of sale consideration will be paid to plaintiffs within a week from the execution of sale deed and the possession of suit land will be delivered to defendant No.1 and 2 only after full payment of sale consideration. Accordingly, on 4.3.2010 the plaintiffs registered sale deed in favour of defendant No.1 and 2 without consideration and in order to save stamp duty, value of land in sale deed was shown to be Rs.4,00,000/-. Plaintiffs were paid only Rs.5,05,000/- in installments and thereafter despite many requests and demands, defendants No.1 and 2 have not paid balance consideration amount of Rs.2,95,000/- and therefore, plaintiffs through their advocate have issued legal notices but even after service of notices, defendants No.1 and 2 have neither replied to notice nor paid balance amount.

4. Defendant No.1 to 3 jointly filed written statement denying the averments made in plaint. They pleaded that entire amount of sale consideration has been paid to plaintiffs and nothing remains to be paid. Since the date of execution of registered sale deed, defendants are in possession of the disputed land.

Contents of sale deed were read and explained by Sub-Registrar to the seller. Sale deed has been executed with the consent of both the parties. Suit has been filed with intent to grab money from defendant No.2, who is a government servant.

5. Defendant No.4 was proceeded ex-parte and therefore written statement has not been filed on behalf of defendant No.4.
6. On the basis of pleadings of parties, learned trial Court framed as many as six issues, afforded opportunity to the respective parties to adduce evidence in support of their respective cases. In order to prove his case, the plaintiff got himself examined as PW-1, Shiv Patoditi as PW-2, Ganpat Gond as PW-3 and got marked documents from Ex.P-1 to Ex.P-9. Defendant No.1 got himself examined as DW-1, Dharmu Sahu as DW-2 one Krishna Kumar Chandel as DW-3 and got marked documents from Ex.D-1 to Ex.D-6.
7. After hearing the respective parties, the trial Court by the impugned judgment decreed the suit of plaintiffs and granted decree of declaration that plaintiff is in possession of suit land, she is entitled to recover balance consideration amount of Rs.2,95,000/- with interest @ 6% p.a. from the date of institution of suit till recovery and restrained the defendants

from interfering with possession of plaintiff over land in question till payment of balance amount of consideration.

8. Learned counsel for defendants No.1 and 2 /appellants herein submits that the learned trial Court decreed the suit of plaintiffs on conjecture, surmises and presuming the facts which were required to be proved by adducing evidence. Plaintiffs have claimed non-payment of balance amount of sale consideration but not pleaded in the plaint that total value of land in question was Rs.8,00,000/- nor adduced any evidence in support thereof. If the consideration amount mentioned in the sale deed was not the actual consideration amount and the actual consideration amount is something else, then the plaintiffs ought to have proved the same by leading cogent evidence. Nothing has been brought on record by plaintiff to substantiate that Rs.8,00,000/- was agreed payable sale consideration for the land in question. Therefore, in view of clear admission on the part of plaintiff in the sale deed, Ex.P-1, which expressly recorded that the entire consideration of Rs.4,00,000/- has been received by sellers (plaintiffs) in presence of witnesses and nothing remains to be received, learned trial Court erred in relying upon the version of plaintiff that sale price fixed between the parties was Rs.8,00,000/- and the entire sale consideration has not been paid. It is well settled preposition of law that

credence must be given to the documentary evidence in preference to oral deposition.

9. He further contended that the learned trial Court erred in relying upon oral evidence of plaintiffs that in order to avoid stamp duty the value of land is mentioned less in sale deed. Perusal of sale deed will reveal that land was valued at Rs.7,98,000/- and accordingly the stamp duty was paid, hence there was no question of undervaluing the sale deed. If the market value of land mentioned in sale deed was less than the minimum market value fixed under relevant rules, the Registering Officer would have not registered the sale deed and would have referred the same to the Collector for proper valuation. He further submitted that after registration of sale deed on 4.3.2010, name of appellants have been mutated in land records but no objection whatsoever has been raised by plaintiffs regarding non-payment of any kind. However, after lapse of about 21 months, based on false and concocted story, sent legal notice to petitioner and thereafter filed civil suit only to get additional amount from the appellants. Thus, it is clear that whole approach of the trial Court in appreciating both oral and documentary evidence is totally erroneous and therefore, the impugned judgment and decree are liable to be set aside.

10. Learned counsel for plaintiff/respondent No.1 herein supporting the judgment and decree of the trial Court, would argue that the land in question belongs to plaintiff / respondents No.1, an illiterate poor lady. It is absolutely false that defendants No.1 and 2 have purchased the property for valuable consideration of Rs.4,00,000/-. Sale price was fixed between the parties was Rs.8,00,000/-, for the purpose of registration the sale deed is registered for Rs.4,00,000/- and agreed consideration was Rs.8,00,000/-, which was to be paid within a week after registration of sale deed. Payments were made in installments, as mentioned in Ex.P-9A, but defendants No.1 & 2 did not pay full sale consideration. Reference has been made to the statement of Krishna Kumar Chandar (PW-3) to submit that deal was finalized with defendant Bharti Markam at Rs.8,00,000/-, value of land mentioned in the sale deed is only for the purpose of stamp duty. He further contended that defendant No.1 Jairam (DW-1) admitted in his cross-examination that the entries of Ex.P-9A are in his handwriting and related to payment made in respect of land. Plaintiffs executed sale deed (Ex.P-1) without consideration on the assurance that entire amount of sale consideration will be paid within a week. However, plaintiffs have been paid Rs.5,05,000/- only and not paid the full amount of consideration, therefore, plaintiffs issued legal

notices (Ex.P-2 and Ex.P-5) but neither said notices were replied nor amount is paid by the purchaser.

11. Considering the submissions of both sides and material available in record, the question that arises for consideration is as follows:-

- Whether the trial Court was justified in holding that an agreement came to be arrived between the parties for the sale of land bearing Khasra No.1/6 area 1.25 acre at Rs.8,00,000/-?

12. Admittedly, the land in question was sold by plaintiff to defendants No.2 by way of registered sale deed dated 4.3.2010. Claim of plaintiff was that she agreed to sell the land in question for Rs.8,00,000/- and only for lowering the value of stamp duty, at the instance of defendant No.1 and 2, the value of land is mentioned as Rs.4,00,000/- in the sale deed and further that, out of total sale consideration, defendants have only paid Rs.5,05,000/- in installments and thereafter not paid balance sale consideration. According to defendants No.1 and 2, the entire amount of consideration was Rs.4,00,000/- and under the sale deed the plaintiff has admitted receipt of the entire sale consideration.

13. Under sale deed Ex.P-1, plaintiff and her deceased mother, had admitted that they have received the entire sale

consideration and nothing left to be received. However, perusal of the record would show that on 14.12.2011 plaintiff through her advocate sent a registered notice to original defendant (since deceased) calling upon her to make balance amount of consideration of Rs.2,95,000/- together with interest of Rs.1,28,900/-. It is clearly mentioned in this notice that at the time of execution of sale deed, it was agreed that total consideration of Rs.8 Lakh will be paid within a week in presence of witnesses of sale deed, but only Rs.5,05,000/- is paid in installments towards consideration and balance consideration is not paid despite repeated demands. On 16.1.2015 (Ex.P-5) plaintiffs again sent notice to original defendant demanding balance sale consideration and when defendant did not pay any heed to the notice, a complaint was also made in the office of Superintendent of Police, Dhamtari on 23.4.2012. Thereafter, on 30.4.2012 a civil suit was filed.

14. Plaintiff was examined as PW-1 and she has stated in her statement that defendant Bharti Markam purchased the land in question in the name of her mother-in-law Puniabai. She has put her thumb impression on the sale deed. Price of land in question was fixed at Rs.8,00,000/-, however, defendant No.1 got lesser amount mentioned in the sale deed in order to save stamp duty. Receipt of payment made by defendant No.1 is Ex.P-9A. Upon non-payment of full sale consideration,

she sent registered notice on 14.12.2011 and 16.01.2012 as also made complaint to police authority.

15. Krishna Chandel (DW-2) is an independent witness as also a witness to sale deed. This witness has stated in his examination-in-chief in the shape of affidavit under Order 18 Rule 4 CPC that defendant Bharti Markam agreed to purchase the land measuring 1.25 acre belonging to Durgabai and her mother Binjhwari and value of this land was fixed at Rs.8,00,000/-. He has further stated that in order to save stamp duty, at the instance of defendant Bharti Markam, the value of land was shown as Rs.4,00,000/- in the sale deed, however, any amount towards sale consideration was not paid to Durga Bai and her mother at the time of execution of sale deed and Bharti Markam said that she will pay the entire sale consideration in installments and till then Durgabai and her mother will continue to be in possession of the land in question. Cross-examination conducted on this witness also suggests that he stuck to his statement which he made in his examination-in-chief. In the cross-examination, he denied that deal of purchase of land was finalized at Rs.4,00,000/- and reiterated that deal was finalized at Rs.8,00,000/-.

16. Jailal Markam (DW-1) has clearly admitted in his cross-examination that 'D to D' part of diary of Ex.P-9A, which relates to total payment of Rs.4,55,000/- was in his

handwriting and it relates to payment with respect to transaction of land. Though this witness has stated that this money entries are not in connection with disputed land, but at the same time he admitted that apart from disputed land, he has not purchased any other land from Shiv Padaoti. This witness has also stated that he does not remember that a sum of Rs.50,000/- was given to husband of plaintiff through his wife in Mahasamund in 2011.

17. True it is that there is acknowledgment by plaintiff in the sale deed Ex.P-1 that the value of land has been received and nothing remains to be received, but the admission of defendant No.1 Jayaram that entries of Ex.P-9A relates to transaction of land and the same are in his handwriting, coupled with statement of Krishna Chandel (PW-3), independent witness to sale deed Ex.P-1 and not supported the recitals in the deed related to consideration, and the fact of issuance of legal notices, filing of complaint before superior authority of defendant No.1 & 2 immediately after registration of sale deed, proves the factum of non-payment of sale consideration at the time of registration of sale deed by defendants to the plaintiff and this Court is in agreement with the view taken by trial Court that sale deed was executed without consideration. If the entire sale consideration was paid to plaintiffs at the time of execution of sale deed, then it

has not been explained by defendants as to for what purpose the amount mentioned in Ex.P-9A, which according to plaintiffs was towards sale consideration of disputed land, was paid to plaintiffs by defendants on subsequent dates. It is true that defendant has taken a stand that entries in Ex.P-9A though related to land transaction but not in respect of the disputed land, however, he did not disclose identity of opposite party with necessary details as also the particulars of the property and total sale consideration, which makes the stand of defendant faulty and unreliable.

18. Most importantly, relevant entries in Ex.P-9A mentions name of 'Shiv' as person to whom amount is paid, who is none else but the husband of plaintiff Durgabai and defendant himself has admitted that the entire transaction was done with husband of plaintiff i.e. Shiv Padoti and he has not purchased any other land from plaintiff. Most importantly, the trial Court after elaborately discussing the evidence led by the parties on the issue of possession, has recorded a categorical finding that plaintiffs are in possession of the land in question, which also shows that entire sale consideration was not paid to the plaintiff because it is specific plea of plaintiff that possession was to be delivered after payment of entire consideration. Thus, it is obvious from the evidence on record that the consideration amount was not paid at the time of execution of

sale deed and only some amount in installments was paid towards consideration after execution of sale deed.

19. So far as payment of consideration is concerned, according to the recitals in sale deed, Ex.P-1, the consideration amount is Rs.4,00,000/- and market value of land, as on that date, was shown as Rs.7,98,000/-. The recitals in sale deed are admissible in evidence, but their value vary according to the circumstances in which the transaction was entered into. Unless the relevant recitals in the sale-deed including passing of consideration is admitted, mere marking of the document does not amount to proof that consideration recited under that document is the actual consideration paid thereunder. "Substantive Evidence" as to price paid would be the testimony of the persons who had actual personal knowledge of the matter viz., the buyer and the seller or the person present at the time of settlement of bargain or payment. Unless there is corroborative oral evidence regarding the price mentioned in the deeds, the recitals by themselves cannot be relied upon. If the seller despite registration of sale deed is able to prove by adducing cogent evidence that sale has taken place without consideration, then mere production of the document or recitals therein are not sufficient in the absence of cogent evidence regarding passing of consideration and its source.

20. From the sale deed it is clear that no payment was ever been made before the Registrar at the time of execution of sale deed. Plaintiff Durga Bai, in her examination-in-chief, has categorically deposed that sale deed was executed without consideration, total consideration of land was Rs.8,00,000/-, she was informed by defendant that in order to save the stamp duty, value of land was shown as Rs.4,00,000/- and at the time of registration it was agreed between them that entire sale consideration will be paid by purchaser within a week and only thereafter possession will be delivered. She has further stated that she is an illiterate person and defendants No.1 & 2 are government employees. Krishna Chandel (PW-3), witness of sale deed, has deposed that consideration fixed for land in question was Rs.8,00,000/-, however, Rs.4,00,000/- was mentioned in the sale deed only for the purpose of stamp payable for the sale deed on the basis of market valuation of the land. There is material in record i.e. Ex.P-9A, which shows that consideration paid to plaintiff on different dates is more than what is reflected in the sale deed. If the sale price of land in question was fixed at Rs.4,00,000/- then as to for what reason amount more than agreed consideration was made to plaintiff. Explanation offered by defendant in his statement that amount mentioned in Ex.P-9A is in respect of some other land does not inspire confidence

because not a single document has been filed and exhibited by defendants to show that amount mentioned in Ex.P-9A was paid in respect of some other transaction of land owned by plaintiff or her husband Shiv Padoti.

21. In case of **Narayan Ganesh Dastane vs Sucheta Narayan Dastane**, reported in **AIR 1975 SC 1534**, Hon'ble Supreme Court has observed thus:-

“.....The normal rule which governs civil proceedings is that a fact is said to be established if it is proved by preponderance of probabilities. Under S.3 of the Evidence Act, a fact is said to be proved when the court either believes it to exist or if conspires its existence so probable that a prudent man ought in the circumstances, to act upon the supposition that it exists. The first step in this process to fix the probabilities, the second to weigh them. The impossible is weeded out in the first stage, the improbable in the second. Within the wide range, of probabilities the Court has often a difficult choice to make but it is this choice which ultimately determines where the preponderance of probabilities lies....”

22. In the case of **Vishnu Dutt Sharma vs. Daya Sapra**, reported in **(2009) 13 SCC 729**, the Hon'ble Supreme Court was pleased to observe as under:

“8. There cannot be any doubt or dispute that a creditor can maintain a civil and criminal proceedings at the same time. Both the proceedings, thus, can

run parallel. The fact required to be proved for obtaining a decree in the civil suit and a judgment of conviction in the criminal proceedings may be overlapping but the standard of proof in a criminal case vis-a-vis civil suit, indisputably is different. Whereas in a criminal case the prosecution is bound to prove the commission of the offence on the part of the accused beyond any reasonable doubt, in a civil suit "preponderance of probability" would serve the purpose for obtaining a decree".

(emphasis supplied)

23. In the case of **M. Siddiq (Dead) Through Legal Representatives (Ram Janambhumi Temple Case) vs. Mahant Suresh Das and others**, reported in **(2020) 1 SCC 1**, Hon'ble Supreme Court elaborated the standard of proof in civil cases and held that it is governed by the preponderance of probabilities standard. Hon'ble Court held as hereunder:-

"720. The court in a civil trial applies a standard of proof governed by a preponderance of probabilities. This standard is also described sometimes as a balance of probability or the preponderance of the evidence. Phipson on Evidence formulates the standard succinctly: If therefore, the evidence is such that the court can say "we think it more probable than not", the burden is discharged, but if the probabilities are equal, it is not. In *Miller v. Minister of Pensions*, [*Miller v Minister of Pensions* (1947) 2 All ER 372], Lord Denning, J.(as the Master of Rolls then was) defined the doctrine of the

balance or preponderance of probabilities in the following terms: (All ER p. 373 H)

"(1) ... It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence, "of course it is possible, but not in the least probable" the case is proved beyond reasonable doubt, but nothing short of that will suffice."

(emphasis supplied)

721. The law recognises that within the standard of preponderance of probabilities, there could be different degrees of probability. This was succinctly summarised by Denning, L.J. in *Bater v. Bater*, 1951 P. 35 (CA) where he formulated the principle thus: (p. 37)

"... So also in civil cases, the case must be proved by a preponderance of probability, but there may be degrees of probability within that standard. The degree depends on the subject-matter." (emphasis supplied)

725. The Court recognised that within the standard of preponderance of probabilities, the degree of probability is based on the subject-matter involved.

726. In *State of U.P. v. Krishna Gopal*, [*State of U.P. v. Krishna Gopal*, (1988) 4 SCC 302 : 1988 SCC (Cri) 928], this Court observed: (SCC p. 314, para 26)

"26. The concepts of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately, on the trained intuitions of the Judge."

24. In case of **Rajaram vs. Maruthachalam**, reported in **2023**

Live Law (SC) 46, it was observed as under:-

"29. A distinguishing fact between the criminal proceedings and the civil proceedings in the present case is that, while in the criminal proceedings the complainant had failed to produce the promissory notes, in the civil proceedings, the complainant had proved the promissory notes. The

High Court found that the Civil Appeals were required to be decided on the basis of the preponderance of probabilities. The High Court found that the complainant had established that he was working as a LIC Agent, that his father was owning extensive agricultural properties and that he was deriving agricultural income. The High Court, on the basis of the evidence placed on record, relying on the preponderance of probability, came to a conclusion that the plaintiff had the financial ability to lend the sum of Rs.3 lakh as on 20th October 1998.....”

25. From the above decisions it is apparent that the civil cases are to be decided on the basis of probability and preponderance. Inference of preponderance of probabilities can be drawn not only from the materials on record but also by reference to the circumstances upon which he relies. In this case, evidence on record shows that plaintiff is an illiterate ignorant and inexperienced lady, and was not well versed with the procedure of execution of sale deed. Whereas defendant No.1 is a government employee working as Assistant Commander and thus had sufficient knowledge and understanding of the commercial transaction. It is a known fact in our country that sale consideration mentioned in the sale deeds are not the true reflection of the value of land and the market rate of the property is always higher than which is shown, at the lesser rate, in the registered document, not only

to save stamp duty payable to the government but also to include payment of cash amount which cannot be accounted for in the sale deed. Hence, there is no reason to doubt the reason explained by plaintiff for mentioning lesser sale price in sale deed Ex.P-1. Thus, it could be inferred on the basis of preponderance of probability that the land in question was sought to be sold for Rs.8,00,000/-.

26. In view of detailed discussion made herein above, this Court sees no valid reason to interfere with judgment and decree passed by learned trial Court, which otherwise appear to be based upon correct appreciation of evidence adduced on record by the respective parties.

27. In the result, this Court finds no merit in the appeal, which is accordingly dismissed. Judgment and decree passed by the learned trial Court is upheld.

28. Decree be drawn up accordingly.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-