

**HIGH COURT OF TRIPURA
AGARTALA**

RSA No.3 of 2021

1. Sri Raghbir Debbarma,
S/O.- Late Satish Ch. Debbarma,
(A Group-D employee of Agartala
Municipal Corporation),
Resident of Ward No.13,
Agartala Municipal Corporation,
Near Haradhan Sangha,
P.S.-West Agartala, P.O.-Agartala,
Distt.-West Tripura.

2. Sri Napu Ranjan Debbarma,
S/O.- Lt. Gyan Chandra Debbarma,
Resident of Natun Tablabari,
P.S.-Khowai, Distt.-Khowai, Tripura.

....Defendant-Appellant(s)

Versus

Sri Prasanta Debbarma,
S/O.-Lt. Sambhu Debbarma,
Resident of Thakurpalli Road,
P.O.-Agartala, P.S.-West Agartala,
Distt.-West Tripura.

....Plaintiff-Respondent(s)

For the Appellant(s)	:	Mr. D. Bhattacharya, Sr. Advocate Mr. S. Saha, Advocate
----------------------	---	--

For Respondent(s)	:	Mr. S.M. Chakraborty, Sr. Advocate Ms. A. Pal, Advocate
-------------------	---	--

Date of hearing and delivery of judgment and order	:	27.03.2023
---	---	-------------------

Whether fit for reporting	:	Yes
---------------------------	---	------------

HON'BLE MR. JUSTICE ARINDAM LODH

Judgment and Order (Oral)

27/03/2023

This is a second appeal filed against the judgment dated 12.05.2020 and decree dated 26.05.2020 passed by learned First Appellate Court in Title Appeal No.30 of 2016 whereby and whereunder the learned First Appellate Court reversed the judgment dated 18.03.2016 and decree dated 02.04.2016, passed by the learned Civil Judge, Senior Division, West Tripura, Agartala in TS 27 of 2012.

2. The facts of the case, as projected by learned trial Court below are as under:

“1. The specific performance of unregistered agreement for sale, dated 06.02.2009 in respect of a land measuring 0.0240 acres comprised in Khatian No.26960, appertaining to old plot No.6019/4783, corresponding new plot No.2127, herein-after referred as the suit land, sought to be enforced herein in cancellation of the registered sale deed bearing No.1-4527, dated 04.08.2010 executed by the defendant No.1 in favour of defendant No.2 during subsistence of the agreement for sale.

2. The defendant No.1 in need of money proposed the plaintiff to sell the suit land in consideration of ₹ 4,37,000/-. Accordingly, the plaintiff accepted the proposal of the defendant No.1 and as

such the defendant No.1 executed an unregistered agreement for sale dated 06.02.2009. The Plaintiff, having friendly relation with the defendant No.1 has made payment of most of the consideration money i.e., ₹ 4,00,000/- as earnest money by taking loan from his friends and relatives on the request of defendant No.1 being in need of money for the purpose of treatment of his wife. The period stipulated for execution of the sale deed as three years which was to be expired on 05.02.2012. Accordingly, the plaintiff since May, 2011 started requesting the defendant No.1 to execute the sale deed on receipt of rest of the consideration money of Rs. 37,000/-, but on several dates the defendant No.1 inspite of having agreed to execute the sale deed and to hand over the possession of the suit land started causing delay in doing so with some flimsy grounds though the plaintiff was/is ready to make payment of rest of the consideration money. When the plaintiff realised that the defendant No.1 was avoiding him to execute the sale deed, the plaintiff issued an Advocate's Notice, dated 06.06.2011 demanding execution of the registered sale deed within 15 days, else he would take shelter in the Court. The defendant No.1 on receipt of the Advocate's Notice assured to execute the sale deed and sought two months as he had to go outside Tripura for treatment of his wife. The Plaintiff stated to have waited for the defendant for more than a month, but the defendant No.1 did nothing and hence the plaintiff again issued a reminder to the defendant through his learned Advocate. Subsequently, the plaintiff came to know that the defendant No.1 had sold the suit land to the defendant No.2 on the Strength of registered sale deed bearing No.1-4572, dated 04.08.2010. Hence,

this suit for Specific Performance of Agreement Sale, dated 06.02.2009 in cancellation of the sale deed executed in favour of defendant No.2.

3. *The defendant No.1 through his written statement has denied all the allegations laid by the Plaintiff. The defendant No.1 also denied to have executed the alleged agreement for sale. It is stated, inter alia, that defendant no.1 has discovered the case to be a handiwork of one Md. Mujaffar Alam Sekendar, better known as Sekendar, who is well known in the Town for his muscle powers. The defendant No.1 has further stated that he had a dispute with his brother on a plot of land which his brother was trying to grab illegally. At that time said Sekendar came forward to help the defendant No.1 to get the dispute resolved in his favour. The defendant No.1 who is working in Municipality as a Grade-IV employee in a simpleton and has to be guarded by his wife against idiotic acts. Sometimes in 2009 said Sekendar approached the defendant No.1 to propose to purchase the land which he freed from the dispute. The wife of the defendant was ailing and said Sekendar proposed to lend some money gratuitously for the treatment of his wife with an open offer to repay the loan conveniently. Thus, a loan of ₹ 25,000/- was taken. The defendant No.1 further stated that it was actually a trap which the defendant could not understand. Later, by a clever ploy a signed cheque was obtained from the defendant no.1 after having obtained a cheque book from the bank at the initiative of Sekendar himself sometimes in May, 2009. Sekendar also got some papers signed by the defendant No.1. All such things alleged to have been done in the*

absence of his wife as it would be difficult for anyone to be-fool her as has been done with the defendant No.1. Allegedly, said loan was paid back in quick installments, but cheque was not returned and was utilised by Sekendar in a case under section 138 of N.I. Act which is still pending in the Court of Judicial Magistrate, First Class, Agartala(Case No. N.I. 130 of 2011). The defendant No.1 further stated that the signed blank papers which was taken from the defendant No.1 by said Sekendar is presumably utilised now by the plaintiff. Otherwise, no document was ever signed by the defendant knowing it to be a sale agreement. The defendant No.1, therefore, stated that it is a case of fraud and misrepresentation collusively done with Sekendar with a definite aim of pressurising the defendant No.1 and to compel him to transfer the suit land without any true consideration. In fine, the defendant No.1 prays for dismissal of the suit.”

3. After exchange of pleadings, the trial Court had framed the following issues:

- “1. Is the suit maintainable in its present form and nature?*
- 2. Has the Plaintiff cause of action to file this suit?*
- 3. Has the Plaintiff entered into an agreement for sale with the defendant No.1 to purchase the suit land?*
- 4. Are the averments in respect of readiness and willingness to perform the contract according to its true construction sufficient to enforce Specific Performance, as prayed for?*
- 5. Is the registered sale deed bearing No.1-4527, dated 04.08.2010 void as against the Plaintiff, if so, is the sale deed liable to be cancelled and delivered up?*

6. Is the Plaintiff entitled to a decree, as prayed for?

7. To what other relief/reliefs the Plaintiff is entitled? ”

4. Evidences were adduced by both the plaintiff and the defendants.

The deed of agreement is exhibited as Exbt.-3. This Exbt.-3 is the basic document to institute the present suit for Specific Performance of Contract and this is the document which led the plaintiff to declare the sale deed executed and registered in favour of one Sri Napu Ranjan Debbarma, the defendant no.2. What has come to the light of this Court during the course of hearing is that the defendant no.1 was the original owner of the suit land. All on a sudden his wife suffered illness and for her treatment he approached to the plaintiff for money. It is the case of the plaintiff that both the plaintiff and the defendant on mutual understanding had entered into an agreement that the defendant no.1 would sell the suit land to the plaintiff on consideration of Rs.4,37,000/-. At the time of entering into the agreement, it is the case of the plaintiff that he paid Rs.4,00,000/- and the balance Rs.37,000/- would be paid after 3(three) years from the date of the agreement vide Exbt.-3, which fact is denied by the defendant no.1 in his written statement.

5. It is the case of defendant no.1 that he never entered into any agreement with the plaintiff/respondent, but, transferred the suit land by executing a registered sale deed dated 04.08.2010 in favour of defendant

no.2, i.e., Sri Napu Ranjan Debbarma. The case of defendant no.1 is that the agreement under Exbt.-3 is a concocted, afterthought, fabricated and manufactured only with the intention to grab the suit land by the plaintiff and his men and agents.

The defendant no.1 has admitted that he took a loan for Rs.25,000/- (Rupees Twenty Five Thousand only) for the treatment of his wife as the plaintiff/respondent gratuitously offered the said amount of money with further assurance that the defendant no.1 would repay the said money at his convenience. On that mutual understanding, the defendant no.1 put his signature in the stamp paper, but, at that time no contents were therein and neither the witnesses nor the plaintiff or the scribe of Exbt.-3 had put their signatures in the said blank stamp paper. Defendant no.1 has further stated that he repaid the said loan amount within a very short period. It is pertinent to mention herein that the plaintiff/respondent also obtained his signature in a blank cheque on the understanding that as soon as the said loan amount would be repaid to him, he would return back the said cheque as well as the stamp paper but, despite his request, the plaintiff/respondent had never returned the said cheque and stamp paper. It is submitted that a cheque bounce case is also going on in a criminal Court under the Negotiable Instrument Act.

6. It is the case of the plaintiff that according to Exbt.-3 deed he approached the defendant no.1 to execute the sale deed in favour of him as per the terms and conditions under Exbt.-3, to which the defendant no.1 denied forcing him to serve a notice upon the defendant no.1 through his learned counsel. But despite receipt of notice the defendant no.1 did not come forward to specifically perform the Deed of Agreement (Ext.-3) by way of executing the sale deed, which, compelled the plaintiff to institute the present suit against the defendants.

7. In the aforesaid context, I have heard Mr. D. Bhattacharya, learned senior counsel assisted by Mr. S. Saha, learned counsel appearing for the appellant (the original defendant no.1) and Mr. S.M. Chakraborty, learned senior counsel assisted by Ms. A. Pal, learned counsel appearing for the respondent.

8. At the time of admission of this appeal following substantial question of law has been formulated:

“i) Whether, without making any further inquiry in the fact, the defendant No.2 had transferred the suit land by way of gift deed to Satsang Vihar, the first appellate court was justified in directing the defendants No.1 and 2 to transfer the land as described in the agreement of sale to the plaintiff?”

None of the learned counsel in course of argument of the present second appeal has urged for formulating any other substantial question of law. As such, this Court has proceeded to hear this appeal on the basis of aforesaid substantial question of law.

9. Mr. Bhattacharya, learned senior counsel has urged this Court to go through the findings of learned trial Court indicating his strong suspicion as regard the execution of the agreement (Exbt.-3) is concerned. Relevant portion of the finding as urged by learned senior counsel is reproduced here-in-below:

“It is apparent on the case of the plaintiff that the defendant No.1 was in urgent need of money for the purpose of treatment of his wife. It, therefore, leads us to draw presumption that the alleged proposal to sell the suit land was made on urgent basis and accordingly the plaintiff has managed ₹ 4,00,000/- also on urgent basis within a short period. In this circumstances, I find it inappropriate to believe the story of the plaintiff who managed an amount of ₹ 4,00,000/- on urgent basis within a short period, but agreed to pay rest of the amount of ₹ 37,000/- only within a period of three years on the reasoning that a prudent man would not believe the circumstances as to payment of balance amount as included in the agreement for sale and as such these circumstances cast a reasonable doubt in the mind of the Court as to execution of the agreement for sale. That apart, on careful perusal of the agreement for sale and the manuscripts of Pw.3 therein it would be apparent that the entire contents of the agreement for sale was written surrounding the signature of the

defendant No.1 which clearly indicates that the signature was obtained first in the stamp paper and the contents therein was written at a later stage. In this view of the matter, I find it appropriate to hold that the preponderance of probability in respect of execution/non-execution of the agreement for sale goes in favour of the defendant No.1.

I, therefore, find and hold that the agreement for sale (Exbt.3) placed on record cannot be acted upon. Accordingly, Issue No.3 stands answered in negative.”

10. In view of the above finding, I have felt it necessary to scrutinize Exbt.-3, i.e., the Deed of Agreement itself. On bare perusal of the contents of the deed, it comes to fore that two different inks were used in writing the name of the recipient of the sale deed and the vendor of the deed of agreement for sale. The writing style of the contents is also found to be different. The pattern of writing the name of ‘Sri Prasanta Debbarma’, etc. in the first paragraph of the agreement and the pattern of writing the next part commencing from ‘Sri Raghubir Debbarma’ is found to be different. I am also agreeable to the finding of the learned trial Court that the entire contents of the agreement for sale was written surrounding the signature of defendant no.1, which ordinarily is not done.

11. True it is, the witnesses to the deed deposed in favour of the deed of agreement for sale. But, as I find, on careful scrutiny of the document as well as the evidences of the plaintiff and the defendant coupled with

the surrounding circumstances, I cannot justify myself to comprehend that the deed of agreement for sale (Exbt.-3) was fairly executed.

12. Situated thus, I find force in the findings of learned trial Judge suspecting the integrity of the agreement for sale (Exbt.—3), where 3(three) years' time was stipulated to make payment of balance consideration of money of only Rs.37,000/- (Rupees Thirty Seven Thousand only) after payment of almost entire amount, i.e. Rs.4,00,000/- (out of Rs.4,37,000/-), and that too, at the time of entering into the alleged written agreement under Exbt.-3.

13. I further find that though the plaintiff had challenged the sale deed, but that sale deed was not exhibited before the trial Court. So, a document being not brought on record in accordance with law cannot be said to be a proved document, to say the least, any decree be passed in absence of proof of such sale deed declaring the same as *void ab initio* and liable to be cancelled. So, the questioned sale deed executed in favour of defendant/appellant no.2 by defendant/appellant no.1 being not 'proved' becomes non-existent to declare the same as *void ab initio* and liable to be cancelled.

14. That apart, most interestingly, the defendant no.1 had produced one witness who deposed as DW.3 and stated in evidence that Sri Napu Ranjan Debbarma, the defendant no.2 had transferred the suit land by

way of gift deed to an organization, i.e. Satsang Vihar, Krishnanagar, Agartala. Said Sri Napu Ranjan Debbarma had obtained prior permission from the Collector to transfer the suit land in favour of Satsang Vihar before execution of the gift deed in favour of the Satsang Vihar. It comes to fore that inspite of this fact being disclosed by the defendants, the plaintiff despite opportunity did not make any attempt to make any cross-examination as regards the date of the gift deed i.e. the execution and registration dates of the gift deed in favour of Satsang Vihar.

15. Mr. Chakraborty, learned senior counsel would emphatically contend that the gift deed was transacted during the pendency of the suit primarily to suggest that it is hit by the doctrine of *lis pendens*. Learned senior counsel drawing my attention to the written statement has tried to persuade this Court that had the defendant no.1 would have pleaded this fact, then, the plaintiff would have got an opportunity to amend the plaint challenging the said Gift deed. So, according to learned senior counsel the fact of Gift deed as surfaced from the deposition of PW.3 is beyond pleadings, and in that case, there would be no difficulty to execute the decree passed by the learned first appellate Court keeping in view the provision embodied in Rule 102 of Order 21 of the Code of Civil Procedure, 1908.

16. I have given my thoughtful consideration to the said submission of learned senior counsel.

17. In the opinion of this Court, to claim a transfer of a property is hit by doctrine of *lis pendens*, the plaintiff must prove firstly that the judgment-debtor has transferred the property after the institution of the suit.

In my opinion, when there was specific evidence let in by defendant nos.1 and 2 during the course of trial that the suit land was transferred by way of gift to the organisation of DW.3, then, duty cast upon the plaintiff either to put a question to the witness as to the date of the execution of the gift deed or to put a question whether the gift deed was executed after the institution of the suit. But, from going through the evidence of DW.3, I find no cross-examination in this regard.

18. Yet another aspect, which comes to fore that the plaintiff could also avail the remedy as provided under Order XI Rule 12 of CPC. Order XI Rule 12 provides that any party may without filing any affidavit, apply to the Court for an order directing any other party to the suit to make discovery on oath of the document/s which is/are or have in his possession or power, which is directly related to the question or controversy raised in the suit.

19. Besides, that was not the end of all remedies available to the plaintiff. Failure to cross-examine the witness for disclosing the fact of transaction did not *ipso facto* shut the door of the plaintiff to avail other remedies under the law. Here, it is pertinent to take note of Section 30 of the Code of Civil Procedure, 1908 (for short, “CPC”) read with Order XI Rule 1 and 2 of CPC, which are reproduced here-in-below, for convenience, in extenso:

Section 30 reads as under:

“30. Power to order discovery and the like.—Subject to such conditions and limitations as may be prescribed, the Court may, at any time, either of its own motion or on the application of any party,-

- (a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;*
- (b) issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;*
- (c) order any fact to be proved by affidavit.”*

Order XI Rule 1 reads as under:

"1. Discovery by interrogatories. – In any suit the plaintiff or defendant by leave of the Court may deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties and such interrogatories when delivered shall have a note at the foot thereof stating which of such interrogatories each of such persons is required to answer: Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose: Provided also that interrogatories which do not relate to any matters in question in the suit shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness.

Order XI Rule 2 reads as under:

2. Particular interrogatories to be submitted. – On an application for leave to deliver interrogatories, the particular interrogatories proposed to be delivered shall be submitted to the Court and that Court shall decide within seven days from the day of filing of the said application. In deciding upon such application, the Court shall take into account any offer, which may be made by the party sought to be interrogated to deliver particulars, or to make admissions, or to produce documents relating to the matters in question, or any of them, and leave shall be given as to such only of the interrogatories submitted as the Court shall consider necessary either for disposing fairly of the suit or for saving costs."

On conjoint reading of the above provisions makes it aptly clear that any of the parties to the suit may take recourse to provisions

embodied in Section 30 of CPC for discovery or production of any document from the other parties to the suit for proper adjudication of the dispute/s. Furthermore, the plaintiff-respondent by way of interrogatories and with the leave of the Court may discover any evidence from the opposite parties related to any matter which is relevant to determine a particular fact in issue. To put it simply, interrogatories would contain a list of questions, in the form of questionnaire which is served upon other party/parties as portrayed in Appendix C to the CPC.

20. In the case at hand, the plaintiff/respondent would have filed an application to deliver interrogatories in writing for examination of the defendants/appellants in the form of questionnaires to furnish reply as to the date of execution of the transaction transferring the suit property in favour of DW.3 by way of Gift. But, the plaintiff has not opted to take recourse of Section 30 of CPC read with Order XI Rule 1 and 2 of CPC, for the reasons best known to him.

21. In the light of above position of law, if we try to make an insight to the evidence of DW.3, then, we may say that the plaintiff could have easily applied to the Court seeking an order directing the defendants or even DW.3 to produce the document, that is, the 'gift deed' under which the transfer of the suit land was effected by the defendant no.2 to DW.3, which would definitely throw light whether the said Gift deed was

transacted after the institution of the suit to attract the doctrine of *lis pendens*.

22. Keeping in view of all these circumstances, according to me, even if the decree is passed in this regard, then also that decree will not be executable because in the context of the case the plaintiff has to seek recovery of Khas possession of the land from the subsequent purchasers i.e. Satsang Bihar and it is settled that a decree which is not executable, is not a decree at all.

23. Mr. Chakraborty, learned senior counsel has further insisted upon this Court to take on the point that the contents of the document would be read as it is appeared from the document itself and more particularly, when the three witnesses to the document had adduced evidence confirming their signatures and contents written in the document. There cannot be any disagreement to the said submission of the learned senior counsel. At the cost of repetition, I re-iterate that on careful scrutiny of the document as a whole i.e. Exbt.-3, I find serious suspicious circumstances arising out of the sale deed which have already been discussed at the preceding paragraphs. There is no rule or law preventing the Court from scrutinizing and to test the veracity of a document to find out its genuinity in the process of due administration of justice.

24. In my opinion, as held by learned trial Court that when Rs.4,00,000/- out of total consideration money of Rs.4,37,000/- was paid to the defendant no.1 as security amount, then, under the agreement it was stipulated that the balance Rs.37,000/- would be paid within 3(three) years. It appears to the mind of this Court that this is an unnatural event which a prudent mind cannot perceive. I am at a loss to understand that a person willing to purchase a land and paying almost the entire amount of the total consideration amount, why he will wait for long 3(three) years to pay the balance consideration of Rs.37,000/-(Rupees Thirty Seven Thousand) only to get sale deed executed and registered.

25. In the light of the above discussions, I find that the findings arrived at by the learned first appellate Court is perverse and not tenable in law and the judgment and decree passed by the trial court is accordingly confirmed.

The second appeal preferred by the defendant/appellants stands dismissed.

Pending application(s), if any, also stands disposed.

JUDGE