

**Against the
Subordinate**
=====

Ram Udit Mah

Mostt Sharda

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Against the Judgment and Decree dated 28.09.1981 passed by Subordinate Judge, Samastipur in Title suit No.151 of 1974.

.....Defendants 2nd party-appellants
Versus

.....Plaintiffs - Respondents

For the Appellant/s :- Mr. Ansay Bahadur Mathur, Advocate
Mr. Virendra Kant Chaudhary, Advocate.
Mr. Rajesh Sinha, Advocate

For the Respondent :- None.

PRESENT

CAV J U D G M E N T

1. The defendants 2nd set have filed this First Appeal against the Judgment and decree dated 28.09.1981 passed by the learned Subordinate Judge, Samastipur in Title Suit No.151 of 1974 whereby the plaintiff respondent's suit for specific performance of contract has been decreed.
2. The plaintiff respondents had filed the aforesaid title suit

No.151 of 1974 for specific performance of the contract by directing the defendants to execute sale deed in favour of the plaintiff and also prayed for confirmation of possession and for recovery of possession of plot No.151 and 155. Alternatively, the plaintiffs also prayed for recovery of possession of the entire suit land.

3. The plaintiffs claimed the aforesaid relief alleging that Ram Pratap Mahto and his son Dhaniklal Mahto had taken loan of Rs.2000/- and executed bond dated 30.06.1970. Subsequently, since they were in need of money, they proposed to sell suit land measuring 4 bigha 5 katha 17½ dhur for Rs.12,000/-. On 24.04.1972, negotiation was finalized and it was agreed that the loan amount will be adjusted in the consideration and the dues of the creditors of the defendants, Dhaniklal Mahto and his father will be paid out of the said amount and the remaining amount shall be utilized for their necessity. Accordingly, the plaintiff paid Rs.335/- to Ram Pratap and Dhaniklal for purchasing stamp which was purchased on 09.05.1972. However, in the meantime, Ram Pratap fell ill. On 05.08.1972, Ram Pratap Mahto and Dhaniklal Mahto demanded Rs.4500/- to pay their creditors Ramji Mahto and Shyam Sunder Mahto. The plaintiff went with them to the creditors and Ram Pratap Mahto paid Rs.2500/- to Ramji Mahto and Rs.2000/- to Shyam Sunder Mahto after taking the amount from the plaintiff. Both the creditors returned the hand note



to the plaintiff after making endorsement. Thereafter, the sale deed was scribed on 7.8.1972 but it became late, therefore, it could not be registered. The plaintiff paid Rs.5000/- to Ram Pratap and Dhaniklal on the date of execution and they promised to register on the next date. The sale deed was handed over to the plaintiff and possession of the land was also given to the plaintiff except the land comprised within plot No.151 and 155 on which residential house of Dhaniklal and Ram Pratap was there.

4. The further case of the plaintiff is that subsequently Dhaniklal and Ram Pratap extended the time for registration on one ground or the other and the period of compulsory registration lapse but thereafter, the plaintiff became seriously ill. After recovery, he again demanded registration of the sale deed but it was avoided so the plaintiff made enquiry and learnt that Ram Pratap and Dhaniklal had executed two sale deeds on 14.03.1973 with respect to Schedule II property to defendant No.4. They also had executed one gift deed in favour of defendant No.5 on 18.5.1973. The property have been described in Schedule III and two other gift deeds in favour of defendant No.6 and 7 with respect to Schedule IV. The defendant No.5 is Chechera Bhatija of Ram Pratap Mahto and defendant No.6 and 7 are daughter and son-in-law of DhaniklalMahto. The sale deed of defendant No.4 was registered at Khagaria to conceal. These

defendant 2nd party had full knowledge of the sale deed dated 7.8.1972 executed by Ram Pratap and Dhaniklal in favour of plaintiff. In fact no consideration was paid by defendant No.4. There was partition in the year 1924 but in the sale deed executed in favour of Ramavtar Mahto, the lands of Dhaniklal were also sold. On these grounds, the plaintiff prayed for the aforesaid relief.

5. The defendant No.4 filed contesting written statement. The defendant No.6 and 7 filed separate contesting written statement. Defendant No.9 also filed separate contesting written statement.

6. The defence of these defendant 2nd party in short is that when the plaintiff came to know about the sale deed in favour of defendant No.4 and gift deeds in favour of defendant No.5 to 7, he in collusion Ram Pratap and Dhaniklal created a forged and fabricated document, i.e., sale deed by antedating it. In fact after purchase and gift, the defendant 2nd party came in possession of the property purchased and donated to them. These defendants have no knowledge about any sale deed or contract between plaintiff and Ram Pratap and Dhaniklal Mahto. The alleged hand note dated 30.06.1970 and the alleged payment by the plaintiff to Ramjee Mahto and Shyam Sunder Mahto is denied by these defendants. Purchasing of stamp of Rs.333/- by Ram Pratap and Dhaniklal was denied. The allegation that Ram



Pratap fell ill was also denied. The further case is that Ramji Mahto and Shyam Sunder Mahto are close relation of the plaintiff. The alleged hand notes are forged and fabricated document and are also antedated Ram Pratap and Dhaniklal never took loan from Shyam Sunder Mahto and Ramji Mahto. All these documents have been created subsequently by the plaintiff. No consideration at all was paid by the plaintiff to Ram Pratap and Dhaniklal for execution of the sale deed in question. On these grounds prayer was also made for dismissing the suit.

7. The learned Court below on the basis of the aforesaid pleadings framed the following issues :-

- (i) Whether the suit, as framed, is maintainable?
- (ii) Whether the plaintiff has got a valid cause of action for the suit?
- (iii) Whether the suit is barred by limitation?
- (iv) Whether the sale deed dated 07.08.72 allegedly executed by Ram Pratap Mahto and Dhaniklal Mahto in favour of the plaintiff is genuine, valid and for consideration?
- (v) Whether the defendants had knowledge of the aforesaid sale deed dated 07.08.72 executed in favour of the plaintiff? If so, whether the contract of the sale deed is binding on the defendant?
- (vi) Whether the suit is barred by the principle of abandonment?
- (vii) Whether the plaintiff is entitled to a decree for specific performance of contract as claimed?
- (viii) To what other relief or reliefs the plaintiff is entitled to?



8. After trial, the learned Court below on the basis of the materials and evidences came to the conclusion that the sale deed ext.'2' dated 7.8.1972 executed by Ram Pratap Mahto and DhaniklalMahto is genuine, valid and for consideration. The Court below also found that the defendants 2nd set had knowledge of the sale deed dt.7.8.1972 and accordingly, decreed the plaintiffs- respondent's suit.

9. The learned counsel, Mr. Ansay Bahadur Mathur, for the appellant submitted that the learned Court below has not properly appreciated the evidences adduced by the parties in their right perspective. The learned Court below has likewise wrongly relied on the hand notes dt.30.06.1970, although there is no endorsement of repayment made by Ram Pratap Mahto and Dhaniklal Mahto. There is no reliable evidence produced by the plaintiff to show that in fact any consideration amount was paid to Ram Pratap Mahto and Dhaniklal Mahto. There was no occasion for taking loan of Rs.2000/- from the plaintiff. But the learned Court below wrongly placed reliance on the case of the plaintiff and wrongly held that the sale deed ext.'2' is for consideration. The defendant adduced reliable evidence that the hand note are forged and fabricated document but the learned Court below did not consider the same. The defendant also produced reliable evidence to show that the alleged creditors, Shyam Sunder Mahto and

Ramji Mahto are closely related to the plaintiff but the learned Court below discarding the evidences held that the plaintiff paid the amount of the hand note to them.

10. The learned counsel further submitted that Ram Ugrah Mahto who has been examined as D.W.17 and who is cousin of the plaintiff and who is witness to ext.2 has clearly stated that he had put earlier date below his signature on a blank stamp paper at the instance of the plaintiff and subsequently, he came to know that the sale deed has been created by the plaintiff. He denied that Ram Pratap and Dhaniklal had executed any sale deed in his presence in favour of these plaintiff's but the learned Court below did not rely on this evidence on flimsy grounds.

11. The learned counsel further submitted that the learned court below has wrongly come to the conclusion that the defendants appellants have the knowledge of the execution of sale deed ext.'2' on surmises and conjectures only and on assumption and presumption. According to the learned counsel, the learned Court below has wrongly held that the question of possession is not very material although in this case the specific pleading of the plaintiff is that after execution of ext.'2', possession of the land was given to the plaintiff.

12. The learned counsel, Mr. Ansary Bahaur Mathur, further



submitted that the learned Court below also did not consider the conduct of the plaintiff that although the stamp was purchased on 9.5.1972 but the alleged sale deed was executed on 7.8.1972 and it was never presented for registration for long period. No evidence has been produced to show that during this period, there was any unavoidable circumstance. Mere explanation have been given that Ram Pratap Mahto and Dhaniklal Mahto extended time. This explanation should not have been accepted by the Court below. According to the plaintiff also, when he learnt that Schedule II property had been sold and gifted then also he did not take any action because he was ill and was not able to move. In fact the defendants have filed report exhibit 'D-1' to show that plaintiff had sold certain lands on 27.6.1976, therefore, when he was not ill during that period, he could have immediately taken steps but false explanation has been given that he persuaded Ram Pratap and Dhaniklal to execute another sale deed which could not have been accepted by the Court below. Further there is no material to show that in fact Rs.5000/- was paid by the plaintiff to Ram Pratap and Dhaniklal on the date of execution of the sale deed. According to the learned counsel, the Court below should have considered that this is a suit for specific performance of contract and although the alleged sale deed which according to the appellant forged and antedating was executed on 7.8.1972 but suit had

been filed in the year 1974 and there is no explanation regarding the delay which shows the conduct of the plaintiff is not above board. No reliable evidence has been adduced regarding payment of the consideration amount. On these grounds, the learned counsel submitted that the impugned judgment and decree be set and the First Appeal be allowed.

13. As stated above, nobody appeared on behalf of the respondent.

14. In view of the above submissions the points arises for consideration in this First Appeal is as to whether the plaintiffs respondent has been able to prove that he has already performed his part of the contract as such is entitled for a decree for specific performance of contract and whether the impugned Judgment and Decree are sustainable in the eye of law or not.

15. It is the specific case of the plaintiff respondent that on 24.4.1972, the negotiation for sale and purchase was finalized and consideration for sell of 4 biggha 5 katha 17½ dhur was fixed at Rs.12000/-. It was also agreed that the loan advanced by the plaintiff to Ram Pratap and Dhaniklal amounting to Rs.2000/- will be adjusted in the said amount. On 05.08.1972, Ram Pratap and Dhaniklal took Rs.4,500/- and paid to the creditors, i.e., Ramji Mahto and Shyam



Sunder Mahto and the plaintiff then paid Rs.5000/- to the defendant No.1 on the date of execution of the sale deed, i.e., 07.08.1972. There is no averment at all in the plaint that the plaintiff was always ready and willing to pay balance consideration amount. It may be mentioned that according to the plaint itself, the plaintiff paid Rs.4500/- and Rs.5000/- i.e., total Rs.9500/- and the loan of Rs.2000/- was adjusted. So the total consideration paid is Rs.11,500/- only. What happened to the balance Rs.500/-, it is not stated. According to the learned counsel for the appellant, this is a suit for specific performance of contract, therefore, it was for the plaintiff to plead and prove that the plaintiff was always ready and willing to perform his part of the contract. The learned counsel submitted that neither there is any such pleading nor there is any evidence. The learned counsel relied upon the decision of the supreme Court **1995 (5) SCC 115 N.P. Thirugnanam Vs. Dr. R.Jagan Mohan Rao, 2000 (2) SCC 428 Ram Awadth Vs. Akhshwayar Dubey** and submitted that in the present case since the law laid down by the Supreme Court have not been complied with by the plaintiff, the suit should have been dismissed by the Court below.

16. In the present case, the defendants appellants filed written statement and their case is that there was no agreement and in fact when the plaintiff came to know about the sale deed and gift deed, he



got the so called sale deed executed by Ram Pratap and Dhaniklal antedating it. From perusal of the impugned Judgment, it appears that the Court below proceed to decide the suit assuming that the total consideration amount of Rs.12,000/- has been paid and nowhere the Court below held that Rs.12,000/- was paid. As discussed above, there is no evidence either payment of Rs.500/- or readiness and willing to pay the said amount.

17. The witness examined by the plaintiff, i.e., P.W.2, 5, 6, and 28 are the witnesses on the question of payment of Rs.5000/- to Ram Pratap and Dhaniklal. The plaintiff also produced ext.5A and 5F, the hand notes to prove that Dhaniklal and Ram Pratap have taken loan of Rs.1000/- each i.e., Rs.2000/- total. The plaintiff as P.W.31 has stated about this advance. Ext. 3 and 3/A have been produced by the plaintiff which are hand notes and P.W.23 has been examined in support of these hand notes. According to these hand notes, Rs.2500/- and Rs.2000/- were paid by the plaintiff to Shyam Sunder and Ramji. So far payment of consideration is concerned, these are the evidences. Without examining as to whether the evidences are acceptable or not even if it is held to be true then also there is evidence of payment of Rs.11,500/- only. Since there is neither any pleading nor any averment to the effect that the plaintiff was always ready and wiling to pay the balance consideration amount and no evidence has been

adduced, the presumption is that the plaintiff failed to prove his continuous readiness and willingness to perform his part of the contract.

18. Now, let us examine the correctness or otherwise of the pleading of the plaintiff regarding payment of consideration amount. From perusal of paragraph 10 of the Judgment, it appears that the Court below clearly recorded a finding that the sale deed dt.7.8.1972 executed by Ram Pratap Mahto and Dhaniklal Mahto in favour of the plaintiff is genuine, valid and for consideration. It will not be out of place to mention here that the Court below sewed away with the statement made in the aforesaid sale deed which is not a registered sale deed. Since the plaintiff is praying for the decree, it is for the plaintiff to prove that the entire consideration amount was paid. So far payment of Rs.5000/- to the plaintiff, on the date of execution of the alleged deed dt.7.8.1972 is concerned, except the bald statement of the witnesses, no documentary evidences have been produced. It is quite unnatural that when the plaintiff was obtaining hand notes for advancing loan of Rs.1000/- to Dhaniklal and Rs.1000/- to Ram Pratap, why he did not obtain hand note or any receipt regarding payment of Rs.5000/- to them after execution of the alleged sale deed because admittedly the sale deed ext.'2' was never presented for registration. Further according to the plaintiff, loan was obtained by



Ram Pratap and Dhaniklal from Shyam Sunder and Ramjee Prasad and for that again hand note were executed but here as stated above for payment of Rs.5000/- no receipt or hand note have been produced. This creates doubt as to whether in fact Rs.5000/- was paid. The witnesses examined by the plaintiff P.W.2, 5, 6 and 28 and the plaintiff, P.W.31, no doubt have stated that Rs.5000/- was paid on the date of execution of ext.2, but the defendants clearly pleaded that when the plaintiff came to know about the execution of sale deed and gift deed in favour of the defendants, this ext.2 was created in collusion with Ram Pratap Mahto and Dhaniklal Mahto antedating the same. Therefore, the execution of ext.‘2’ itself was under challenge and further that ext.‘2’ is not a registered sale deed, therefore, there is no question of presumption of its genuineness.

19. D.W.17 and D.W.41 are the two attesting witnesses of the sale deed ext.‘2’. Both the witnesses have been produced by the defendants who have clearly stated that the plaintiff obtained their signature on plain stamp paper and they put their signature giving previous date at the instance of the plaintiff. It may be mentioned here that D.W.17 is also one of the brother of the plaintiff as has been admitted by him to the effect that plaintiff is his cousin.

20. Regarding the payment of Rs.4500/- to the creditors of Ram



Pratap and Dhaniklal, namely, Shyam Sunder and Ramji Mahto is concerned, the plaintiff has examined P.W.31 and produced ext.3 and 3/A. Ext.3 is the endorsement made by Shyam Sunder Mahto wherein he has stated that he has received Rs.2000/- from Bhikar Mahto and likewise ext. 3/A is endorsement of Ramji Mahto who has endorsed that he received Rs.2500/- through Bhikar Mahto. It is not the endorsement that in fact Ram Pratap and Dhaniklal received the amount from the plaintiff and they paid to Shyam Sunder and Ram Prasad. In the plaint, it is pleaded that Ram Pratap and Dhaniklal demanded Rs.4500/- for payment to the said two persons, therefore, plaintiff accompanied both of them and then plaintiff paid Ram Pratap and Dhaniklal for payment to Shyam Sunder and Ramji Mahto. If plaintiff was present at the time of endorsement and payment of the amount and according to plaintiff, the amount was paid to Ram Pratap and Dhaniklal who paid to them the endorsement should have been that they received the amount from Dhaniklal and Ram Pratap. P.W.23 is Ramji Mahto. In his evidence, he has stated that Ram Pratap Mahto paid the amount by taking it from the plaintiff. So far this evidence is concerned, it is not the endorsement of this witnesses in the alleged hand note. Further in both these endorsement ext.3 and 3/A, there is no signature of either Ram Pratap or Dhaniklal. According to the plaintiff, Ram Pratap and Dhaniklal were present

then why they did not sign? Likewise if payment was made by Ram Pratap and Dhaniklal why endorsement was made that they received the amount from the plaintiff? There is no explanation at all.

21. The plaintiff in paragraph 5 of the plaint clearly pleaded that Ram Pratap and Dhaniklal made payment to the two creditors by taking the amount from the plaintiff whereas the endorsement, ext.3 and ext.3/A, are contrary to the pleading. It becomes now clear that the aforesaid amounts were paid suo motu by the plaintiff. It is the case of the defendants that Ramji Mahto and Shyam Sunder Mahto never advanced any loan. The defendants have examined witnesses to show that Ramji and Shyam Sunder are closely related with the plaintiff. D.W.18, D.W.41 and D.W.42 are on this point. D.W.18 has stated that plaintiff's son was married with daughter of brother of Ramji Mahto. D.W.41 claimed to be the friend of son-in-law of plaintiff. D.W.42 also stated in the same line, i.e., relationship of plaintiff with Ramji. From perusal of the Judgment of the Court below, it appears that the Court below on minor discrepancy here and there in the cross examination disbelieved these witnesses. D.W.41 is also attesting witnesses to ext.'2', who as stated above has stated that he has given the previous date below his signature at the instance of the plaintiff. Therefore, it becomes clear that Ramji Prasad was relation of the plaintiff. According to the appellant, these hand notes



said to have been executed by Ram Pratap and Dhaniklal are forged documents. Ramji Prasad is relation of the plaintiff. The payment is made by the plaintiff to Ramji Prasad and Shyma Sunder Prasad. There is no case pleaded by the plaintiff that it was agreed between them that the loan taken by Ram Pratap and Dhaniklal from Shyam Sunder and Ramji Mahto shall also be adjusted in the consideration amount of Rs.12,000/-. The only case pleaded by the plaintiffs that the loan of Rs.2000/- advanced by him to them, i.e., Rs. 1000/- each will be adjusted.

22. In view of the above discussion, it further appears that this amount of Rs.2500/- and Rs.2000/- were paid by the plaintiff suo motu to Shyam Sunder and Ramjii and obtained the endorsement. It is not the case of the plaintiff that the hand notes were given by Ram Pratap and Dhaniklal to the plaintiff. Admittedly, therefore, now, this amount was not paid by the plaintiff to Ram Pratap and Dhanik Lal.

23. According to the case of the plaintiff on 7.8.1972, ext.'2' was executed and the suit has been filed in the year 1974. For this long period, according to the plaintiff, the explanation is that on the date of execution, the sale deed could not be registered because it became late. Ram Pratap and Dhaniklal wanted some time for registration of the document and subsequently, they went on



extending the date on some pretext or the other. Thereafter, the plaintiff seriously fell ill. Except the statement that Ram Pratap and Dhaniklal wanted some time and extended it, no other explanation is there. No reason has been assigned why they wanted time and did not registered the document. Why they did not accept the receipt of the consideration amount from the plaintiff and why they did not present it for registration as according to the plaintiff, total consideration amount was paid to them. There is no explanation at all. The plaintiff never gave in writing demanding them to present the sale deed or register the document as early as possible.

24. The defendant have produced ext. 'F-1' which is compliant register to show that Dhaniklal Mahto had filed a complaint case under section 323 and 324 against the plaintiff and his son. This has been produced to show that there was strained relationship between them. In such circumstances, mere statement of the plaintiff that Ram Pratap and Dhaniklal wanted time and then they extended time for registration cannot be relied upon. If there was enmity between both the parties, how the plaintiff relied on them and did not even gave any notice demanding registration of the sale deed. Therefore, there is no explanation. Why he did not obtain any receipt regarding payment of Rs.5000/-,? There is no explanation. Why he paid directly to Ramhji and Shyam Sunder without knowledge of Ram Pratap and Dhaniklal?



There is no explanation. Therefore, the conduct of the plaintiff is not above board. It appears that the Court below considered this ext. 'F-1' but held that it is not helpful to the defendant as the defendant pleaded that the plaintiff in collusion with Ram Pratap and Dhaniklal created ext. '2'. The approach of the Court below appears to be wrong. Here, the plaintiff is claiming the decree and, therefore, it is for the plaintiff to remove all the doubts and approach the Court with clean hand. The defendant is not required to prove the case pleaded by the defendant and on failure to prove the case of the defendant, the plaintiff will not get decree.

25. The plaintiff has examined P.W.25, the doctor, and also produced the prescription as well as report of the doctor to show that the plaintiff was under treatment from 28.11.1972 to 29.11.1973. It is not necessary to go into great details regarding ext. '7' series and the witnesses P.W.16, 26, 32, who have stated about the illness of the plaintiff. Ext.D/1 has been produced by the defendant to show that on 27.6.1973, the plaintiff executed sale deed and presented the same for registration. Ext. D/1 is the report of the registration office. It is not denied by the plaintiff. Now, if he was able to execute and register the sale deed on 27.6.1973 what prevented him from not taking any action against the said Dhaniklal and Ram Pratap and what prevented him from getting the sale deed registered by both of them. It is not



the case pleaded by the plaintiff that during this long period, i.e., from the date of execution of the sale deed dt.7.8.1972 or subsequent thereof till the institution of the suit dt.7.8.1974, he was bedridden. Ext.'D/1' shows that he was able to move and was moving and had gone to registration office for selling some land. The Court below considered this document but held that this ext.'D/1' support the case of the plaintiff that he was ill and was in need of money, therefore, he sold the land. This approach, in my opinion, again is wrong. This is nothing but surmises and conjectures. It is not the case of plaintiff that he although was unable to move but anyhow he went to registration office for the purpose of registering the sale deed. Rather the case is that he was seriously ill so he did not approach the Court earlier.

26. It may be mentioned here that the Court below considered the genuineness or otherwise of the recitals made in the alleged sale deed ext.'2' regarding whether Dhaniklal and Ram Pratap were in need for money or not. Thereafter, on the basis of evidences recorded finding that the said two persons were in need of money. In my opinion, this question is immaterial here for decision. Whether there was any legal necessity or not is not to be decided because the alleged sale deed ext.'2' is not a registered document. The question is whether the whole amount of consideration was paid by the plaintiff

or not. If the full consideration amount has been paid, he is entitled for execution and registration of a sale deed in his favour.

27. It further appears that the Court below decided the genuineness or otherwise of the sale deed in favour of defendant No.4 and the gift deeds in favour of other defendants and recorded finding that the sale deed in favour of defendant No.4 is for without consideration. In my opinion, since this is a suit for specific performance of contract, it is not necessary to decide the question regarding passing of consideration and validity of the gift deed. The Court below has, therefore, wrongly decided this question which are immaterial and uncalled for.

28. From perusal of the Judgment, it appears that the Court below held that the defendants had knowledge about ext.'2' and, therefore, granted the decree. The plaintiff has adduced evidence that the defendant have knowledge of ext.'2', except this bald statement, no other reliable evidence has been produced. Ext.'2' itself is unregistered document. Therefore, it is for the plaintiff to have adduced cogent and reliable evidence in support of the fact that in fact the transferee had the knowledge about the agreement to sell between the plaintiff and Ram Pratap and Dhaniklal. As stated above, no reliable evidence has been produced. The Court below held that the



sale deed was registered at Khaghria with a view to conceal the real fact. Ext.B and B/1 are the sale deeds and Ext.A / 1-1 and A -2/1 are the gift deeds which were registered at Khagaria. The learned Court below examined the correctness or otherwise of these deeds from paragraph 11 on wards and at paragraph 13 held that defendant No.4 to 7 had knowledge about the execution of the sale deed, ext.'2', without there being any evidences in support of this fact. Therefore, the finding of the court below on this question is based on no evidence, as such is per verse.

29. It is settled principle of law that a person who claims decree for specific performance has got no equity in his favour. The plaintiff here, therefore, should have produced reliable evidence in support of the fact that the subsequent transferee had the knowledge about the agreement between the plaintiff and Dhaniklal and Ramji Mahto.

30. In view of my above discussion, I find that the plaintiff failed to prove payment of full consideration amount of Rs.12000/-. The plaintiff also failed to prove that he was always ready and willing to perform his part of the contract and ext.'2' is not a genuine document. I also find that the plaintiff failed to prove that the subsequent purchaser, defendant No.4, had any knowledge of the

agreement to sell between the plaintiff and Dhaniklal and Ram Pratap. I, therefore, find that the plaintiff is not entitled to a decree for specific performance of contract. The findings of the Court below on these points are hereby reversed.

31. In the result, this First Appeal is allowed. The impugned Judgment and Decree is set aside and the plaintiff’s suit for specific performance of contract is hereby dismissed. No order as to costs.

(Mungeshwar Sahoo, J)

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