

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.66 of 1993

IN

First Appeal No.6 of 1981

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1. Jai Kant Singh, son of Late Shankar Dayal Singh, (since deceased) and substituted by his heirs and legal representatives vide order dated 7.08.2012.

(i) Kali Singh

(ii) Dabloo Singh

(iii) Mostt. Sudha Devi, wife of late Jai Kant Singh,

2. Bijai Singh (since deceased) and substituted by his heirs and legal representatives vide order dated 22.08.2005.

(i) Sumitra Devi, wife of late Bijai Singh

(ii) Pappu Singh, son of late Bijai Singh

(iii) Pinku Singh, son of late Bijai Singh

(iv) Sila Devi, wife of late Amar Nath Singh, daughter of late Bijai Singh

(v) Smt. Usha Devi, wife of Sri Binod Singh, daughter of late Bijai Singh

(vi) Sangita Kumari, daughter of late Bijai Singh

All are residents of Village Daulatpur, P.S. Koelwar, District-Bhojpur.

.... Defendants- Appellants

Versus

1. Ram Subhag Singh Kushwaha son of Sant Bilash Singh Kushwaha (since deceased) and substituted by his heirs and legal representatives vide order dated 22.3.2001.

(i) Byash Singh

(ii) Sri Ram Singh

(iii) Bijay Singh

All sons of late Ram Subhag Singh Kushwaha

(iv) Dhampato Devi W/o late Ram Subhag Singh Kushwaha

2. Hare Ram Singh Kushwaha, son of Ram Saurup Singh Kushwaha,

Residents of village- Daulatpur, P.S. Koelwar, District-Bhojpur.

.... Plaintiffs-Respondent/s

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Appearance :

For the Appellant/s : Mr. Dhruv Narayan Singh, Senior Advocate
Mr. Abhishek, Advocate

For the Respondent/s : Mr. Surendra Kumar Singh, Senior Advocate
Mr. Praveen Prakash, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 28-01-2015

This Letters Patent Appeal is filed against the

judgment dated 16.07.1993 rendered by the learned Single Judge in Appeal from Original Decree No.6 of 1981. The appeal in turn was filed against the judgment and decree dated 14.10.1980 passed by the learned 3rd Additional Subordinate Judge, Arrah, in Title Suit No.70/2 of 1977/1980.

The defendants in the suit are the appellants herein.

The facts, in brief, are as under:

The respondents filed a suit against the appellants for the relief of specific performance of an agreement of sale, dated 13.12.1976. It was pleaded that the appellants entered into an agreement of sale in respect of 45 decimals of land, in plot no.986, Khata No.162 of village-Daulatpur, Ara- District; for a total consideration of Rs.17,300/-. A sum of Rs.3,000/- is said to have been paid on the date of agreement. The respondents pleaded that though a notice, requesting the appellants to execute the sale deed was issued, they did not respond to it; and left with no alternative, the suit was filed. It was stated that the respondents were ready and willing to perform their part of contract.

The appellants filed their written statement

opposing the suit. They denied the very execution of the agreement. It was alleged that the suit agreement of sale was forged one. Alternatively, it was pleaded that the executant, by name Jaikant Singh was addicted to intoxicants and taking advantage of the same, the agreement was obtained from him, by using undue influence and coercion. The absence of cause of action and some other pleas were also raised.

The trial Court decreed the suit. The same was upheld by the learned Single Judge, in the appeal. Hence, this Letters Patent Appeal.

Sri Abhishek, learned counsel for the appellants, submits that the respondent was a minor when the agreement is said to have been entered into, and the resultant contract is, therefore, void. He submits that the agreement was brought into existence, by using undue influence, and coercion, and in fact, the executant did not have the competence, to deal with the property, which is held by the joint family. He further contends that the trial Court and the learned Single Judge did not take into account, the various questions of law and have decreed the suit without, there being any basis.

Sri Surendra Prasad Singh, learned senior



counsel for the respondents, on the other hand, submits that the plea that the respondent was a minor when the agreement was executed, was not raised in the suit at all and when it was raised for the first time in the first appeal, the learned Single Judge dealt with the same thoroughly and rejected it. He submits that the plea of the forgery, on the one hand, and that of undue influence, on the other hand, cannot go together and both Courts have taken correct view of the matter and the same does not warrant interference by this Court.

The suit was filed, by the respondents, for the relief of specific performance of an agreement of sale. On the basis of the pleadings before it, the trial Court framed the following issues:

1. *Have the plaintiffs got a valid cause of action for the suit?*
2. *Is the suit as framed maintainable?*
3. *Is the suit bad for defect of parties?*
4. *Is the deed of contract (Mahadnama) dated 13.12.1976 genuine, valid and binding on the defendants?*
5. *Are the plaintiffs entitled to a decree of specific performance of contract for sale of the suit property as claimed by them?*
6. *To what other relief or reliefs, if any, are the plaintiffs entitled?*

Before the trial Court, P.Ws 1 to 12 were examined on behalf of the respondents, i.e. plaintiffs and D.Ws.1 to 7 on behalf of the appellants herein (defendants). The relevant documents were also filed as exhibits. The trial Court decreed the suit, through the judgment dated 14.10.1980.

In the First Appeal, the learned Single Judge of this Court framed the following points for consideration.

- (i) *Whether the contract for sale (Ext.6) dated 13.12.1976 is valid, binding and enforceable against all the members of the joint family?*
- (ii) *Whether the respondents have failed to establish that they were always ready and willing to perform their part of the contract and whether the finding of the learned court below in this regard is erroneous?*
- (iii) *Whether the discretionary power of granting relief for specific performance of the alleged contract has not been properly exercised by the learned court below?*

The appeal was dismissed.

In the Letters Patent Appeal also, the learned counsel for the appellants repeated the same contentions.

At the outset, it needs to be observed that the



plea that the respondent was minor as on the date of execution of the agreement was not raised in the written statement at all. Obviously for that reason, no issue was framed on that aspect, by the trial Court. It hardly needs any mention that the question as to whether the party to a suit was a minor on a particular date, is a pure question of fact and it is only when a plea is raised in the pleadings about it, that an occasion would arise for the Court to deal with the matter, by framing an issue. Having remained silent in their written statement, on this aspect, the appellants cannot raise such an important question of fact for the first time, in the appeal or for that matter in this Letters Patent Appeal. At any rate, the learned Single Judge referred to the relevant precedents on the point and held that even if the plea is true, the transaction does not get vitiated. We are in agreement with the same.

The other important ground raised by the appellants is that the executant, i.e. Jaikant Singh was addicted to intoxicants and taking advantage of the same, the agreement was brought into existence by the respondents. Firstly, the plea is self contradictory. They pleaded that the agreement is forged one. At the same breath, it is alleged that the agreement is procured through

undue influence or coercion. This proceeds on the assumption that the document is not forged. Secondly, the evidence on the plea of undue influence is very weak. It was not established that the executant suffered from any infirmity or incapacity, as pleaded.

The trial Court recorded a clear finding to the effect that the execution of the agreement for sale was proved. That being the case, the appellants were under obligation to execute the sale deed. No plea as to the financial incapacity of the respondents or non-compliance with the conditions of agreement was raised. At any rate, the respondents have not only pleaded that they are ready and willing to pay the balance of consideration, but also have deposited the amount soon after the decree was passed. The scope of interference in a LPA is relatively, limited. We do not find any basis to interfere with the concurrent findings, recorded by the trial Court and the learned Single Judge of this Court.

We, however, direct that having regard to the passage of almost 30 years, the respondents can be required to pay some more amount, in case, the appellants are willing to execute the sale deed in compliance of the decree.

Hence, we dismiss the Letters Patent Appeal

upholding the decree passed by the trial Court with a modification that the respondents shall be under obligation to pay a further sum of Rs.25,000/- towards consideration to the appellants, provided the appellants execute the sale deed within two months from today. They shall also be entitled to withdraw the sale consideration which is in deposit before the trial Court together with accrued interest. However, in case, they fail to execute the decree as indicated above, they shall not be entitled to additional amount of Rs.25,000/-, and the respondents shall be entitled to put the decree, to execution.

There shall no order as to costs.

Interlocutory applications, if any, shall also stand disposed of.

(L. Narasimha Reddy, CJ)

AFR

(Gopal Prasad, J)

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