

IN THE HIGH COURT OF JUDICATURE AT PATNA
First Appeal No.352 of 1991

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Against the judgment j and decree dated 28th January, 1991
decree sealed and signed on 07.02.1991 passed by Sub-Judge Ist,
Danapur in Title Suit No. 91 of 1984.

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1(a). Chinta Devi D/o Late Sant Lal Singh and wife of Shiv
Shankar Singh, R/o village- Hussainchak, P.S.- Naubatpur,
District- Patna

1(b). Sanjukta Devi D/o Late Sant Lal Singh and wife of Ram Babu
Singh, R/o village- Simra Parsa, P.S.- Parsa, District- Patna

1 ©. Lilawati Devi D/o Late Sant Lal Singh and wife of Sri
Shailendra Singh, R/o village- Gopalpur, P.S.- Maner, District-
Patna

2(i). Smt. Sunita Devi wife of late Binay Kumar Singh @ Binay
Kumar

2(ii). Rajiv Rai son of Late Binay Kumar Singh @ Binay Kumar

2(iii). Sanjee Kumar Son of Late Binay Kumar Singh @ Binay
Kumar

All R/o village- Dhanaut, Mahua Bagh Tola- Rupashpur, P.S.-
Rupashpur, District- Patna

3. Ranjay Kumar Singh @ Ranjay Kumar son of Late Sant Lal
Singh

4. Pramod Kumar Singh @ Pramod Kumar son of Late Sant Lal
Singh

All residents of village Dhanaut Mahua Bagh, Tola- Rupashpur,
P.S.- Rupashpur, District- Patna..... Appellants

Versus

1 (a). Sita Devi wife of Late Dr. Laxmi Narain Singh

1 (b). Binay Kumar Sinha S/o Late Dr. Laxmi Narain Singh

1 © . Abinash Kumar S/o Late Dr. Laxmi Narain Singh

1 (d). Rajesh Kumar S/o Late Dr. Laxmi Narain Singh

1 (e). Mrs. Ranu Rani Singh D/o Late Dr. Laxmi Narain Singh and
wife of Randhir Kumar Singh

All R/o Sidhushwar Market, Dariapur, Patna, P.S.- Kadam Kuan,
District- Patna

1 (f). Mrs. Sangit Sinha D/o Late Dr. Laxmi Narain Singh and wife
of Tarun Kumar Sinha, R/o Arya Kumar Road, P.s.- Kadamkuan,
District- Patna

2. Rajesh Singh S/o Shri Ram Jatan Singh, R/o Anandpur West
Boring Canal Road, P.S.- Sri Krishnapuri, District- Patna

.... Respondents

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Appearance :

For the Appellants : Mr. K. N. Choubey, Sr. Advocate
Mrs. Veena Rani Prasad, Advocate
Mr. Vishal Saurabh, Advocate

For the Respondents : Mr. J. S. Arora, Advocate

Mr. Subhash Pd. Singh, Advocate
Mr. Gaurav Pratap, Advocate

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA
C.A.V. JUDGMENT
Date: 14-10-2015

The instant appeal is directed against the judgment and decree dated 28th January, 1991 decree sealed and signed on 07.02.1991 passed by Sub-Judge Ist, Danapur in Title Suit No. 91 of 1984 whereby and whereunder the suit was decreed in part with cost on contest declaring that the plaintiff no. 1 is entitled for specific performance of contract for sale for the entire land in suit on the basis of deed of agreement for sale dated 15.02.1982 and he is also entitled to purchase the land in suit with possession thereon as per agreement in the names of different persons for different area and on the basis of different sale deeds after making payment of the balance consideration amount to the defendants directing the defendants to execute the sale deed in favour of the plaintiff no. 1 or his nominee or nominees after receiving the balance consideration amount as per agreement within two months failing which the sale deed shall be executed through the process of the court on depositing the balance amount by the plaintiff no. 1 in the court. The plaintiff no. 1 was not found entitled to get any interest on the cost of the suit and on advanced money and also not entitled to get Rs. 1,000/- as claimed in the plaint as compensation.



2. Title Suit No. 91 of 1984 was filed by the plaintiffs for a decree of Specific Performance of Contract against the defendants and also for a direction to the defendants for executing the sale deed on receipt of balance consideration amount in favour of plaintiffs as per the terms of the deed of agreement to sale dated 15.02.1982 and also for other reliefs as claimed in the plaint.

3. Briefly stated, the case of the plaintiffs is that the defendants are the members of joint Hindu Family governed by Mitakchara School of Hindu Law and defendant no. 1 Sant Lal Singh (now deceased) was the manager and Karta of the family. The defendant no. 2, 3 and 4 were minors on 15.02.1982 and under the guardianship of their father Sant Lal Singh and being well represented and safeguarded by their father: The said Sant Lal Singh to meet the legal necessity, to arrange marriage, to purchase agricultural lands in villages and to meet the costs of education of children and other pressing needs of the family agreed to sale the lands of Khata No. 55, Plot No. 307 area 17 Katthas 8 Dhurs and 16 Dhurki, which he got as $\frac{1}{4}$ share in the partition, to the plaintiff no. 1 Laxmi Narayan Singh and his sons. Similarly other sharers Masomat Raj Kumari Devi and her sons and grandsons agreed to sale their land to Vinay Kumar Singh and his sons. Moong Lal Singh and his branches agreed to sale their lands to Sri Avinash Kumar Singh and his two sons and Ramanand Singh



and his sons agreed to sale their lands to Shri Rajesh Kumar and his sons. The terms and conditions for sale were common and all the purchasers were represented through Dr. Laxmi Narayan Singh. Dr. Laxmi Narayan Singh entered into an agreement with defendants to purchase the suit land on 15.02.1982 either in his name or in the names of his associates, as per convenience, at the rate of Rs. 11,500/- per katha total value of Rs. 2,00,560/-. Plaintiff no. 2 is the associate of plaintiff no. 1. The suit land measuring 17 Katha, 8 Dhurs and 16 Dhurki is cast rayati land being part of plot no. 307 khata no. 55 situated at village Dhanaut, Mahuabag, Tola Rupaspur, P.S.- Danapur which is fully described in Schedule I of the plaint. According to the plaintiffs, it was made clear to the defendants that suit land would be purchased by different persons for different area to which the defendants readily agreed and for convenience, shake, the agreement was signed only by plaintiff no. 1 as representative of the entire body of purchasers and the plaintiff no. 1 paid advance of Rs. 20,000/- and on receipt of the said amount the defendants executed the deed of agreement for sale dated 15.02.1982 and all the terms and conditions of the agreement were incorporated in the said deed which was handed over to the plaintiff. It was agreed that within three months from the date of agreement, dated 15.02.1982, the defendants would execute the sale deed on payment of rest consideration amount by the plaintiffs and the said period of three

months would extended if it was so required. At the time of agreement entered into in between the parties there was no necessity for obtaining permission but the defendants illegally put off the matter and evaded to execute the sale deeds and thereafter, the District Magistrate, Patna had stopped the registration of land in question on 20.06.1982.

4. The defendants being in their pressing needs of money, approached the plaintiff no. 1 for further advance on the basis of agreement for sale, dated 15.02.1982, and on the request of the defendants the plaintiff no. 1 again paid Rs. 50,000/- to the defendants on 27.05.1982 which was received by all the defendants but the endorsement was made by defendant no. 1 as manager and karta of his family in presence of witness Nagendra Singh and several other respectable persons.

5. Further case of the plaintiffs is that stamps were purchased with the consent of defendants on 15.06.1982 in the name of Smt. Sita Devi for Rs. 4,317/- and in the name of Laxmi Narayan Singh for Rs. 3,415/- but the defendants did not execute the sale deed after receiving the consideration amount resulting the defendants had to return the said stamps vide Refund Case No. 82 and 83 of 1983-84 respectively wherein refund were made after heavy deduction and plaintiffs suffered heavy loss, as the plaintiffs were entitled to purchase the lands in the name of different persons as per terms of agreement and accordingly



stamps were purchased in different names but the defendants acted fraudulently and collusively. The defendant no. 1 made endorsement on the deed of agreement to sale on 22.06.1982 that he would execute the sale deed within a month after obtaining the permission from competent authority but cunningly he had not applied for any permission to sale nor had sworn any affidavit for that purpose and as such the time for execution of sale deed has been extended due to this conduct and inaction of the defendants. When no specific response was made by the defendants and other sets of co-sellers, then the plaintiff no. 1 served notice dated 12.01.1983 calling upon them to furnish documents and take steps for permission etc. for favour of completion of four transactions and after service of notice the defendants and other sets of sellers sent reply letter dated 06.12.1983 in which it was fraudulently stated that the stipulated period to execute the sale deed had elapsed and there was no need for permission. The plaintiff no. 1 again sent notice dated 21.05.1983 which was refused on 24.05.1983 but due to the fault of postal authority, the refusal letter was handed over to the plaintiff no. 1 on 16.12.1983 and then the plaintiffs contacted the defendants and other sets of sellers and due to intervention of some common friends, the defendants took time to finalize the matter and they never gave any final reply and at last on 26.03.1984 they expressed that they wanted to increase the price of the lands in question for which the

plaintiffs and other purchasers could not agreed resulting the necessity for filing of the suit.

6. The defendants appeared and filed separate written statement. The defendant no. 1 in his written statement alleged that no cause of action arose to the plaintiff for filing of the suit and as such the suit as framed is not maintainable. The suit is also barred by law of limitation and also under Section 34 of the Specific Relief Act and by the Principle of estoppel, waiver and acquiescence. The suit is also bad for misjoinder of plaintiff no. 2 as he was never any party to the agreement for sale. It is stated that the defendants are separate in mess and business and joint family properties have already been partitioned including the suit land by meets and bounds 15 years ago and they are paying rent and obtaining the receipts separately. It has been admitted that the agreement for sale for the lands in question was entered into between the plaintiff no. 1 and the defendants and deed of agreement to sale was executed which was scribed at the dictation of plaintiff no. 1 and the same was not read over and explained to the defendants at that time. It has also been agreed that Rs. 20,000/- was also paid on that day by the plaintiff no. 1. It was agreed that the sale deed would be executed by the defendants in favour of plaintiff within three months on payment of balance consideration money to the defendant but subsequently, some new terms were introduced in the bai-beyana deed and for that the



plaintiffs are liable to be prosecuted. The plaintiffs cannot take advantage of the new terms inserted in the said deed. The defendants wanted to purchase culturable land at different places for maintaining the family and after executing the agreement to sale wanted to purchase the land accordingly, but as the balance consideration amount was not paid by the plaintiff no. 1 within stipulated period, the plaintiff could not get the sale deed executed and on that account the defendants could not be able to purchase the culturable land and the act of the plaintiff no. 1 put the defendants in irreparable loss and as such, the advance money paid to the defendants is forfeited. The plaintiff no. 1 did not pay the balance consideration money nor he was ready or willing to get the sale deed executed and register though the defendants were making repeated demand and as such, after expiry of stipulated period the claim of the plaintiff for specific performance of contract and in the alternative for refund of bai-Beyana money is misconceived and ill-advised. Moreover, even after expiry of the period the plaintiff could not make payment of balance consideration amount and the alleged subsequent endorsement on the Bai-beyana deed by the defendant are not valid therefore. This defendant does not accept the payment of consideration money and the subsequent endorsement about the receipt of the consideration money and extension of time is not admitted by this defendant and the signature of defendant no. 1 was obtained by



misrepresenting the fact and no payment was made and as such, no endorsement was made by the defendant no. 1. The subsequent endorsement on the deed of agreement is not genuine, legal and valid and the plaintiff no. 1 could not acquire any right to file the suit for specific performance of contract as the deed of agreement to sale, dated 15.02.1982, has already expired. The defendant no. 1 is illiterate man and he only knows to write his name. The plaintiff cannot take advantage of this fact. This defendant never filed any application for obtaining permission for executing the sale deed of the land in question before competent authority as the land is culturable, hence, there was no necessity for swearing affidavit for permission for sale or filing petition for that purpose. The defendant never agreed to sale the suit land to other than the plaintiff no. 1. This defendant never agreed to execute the sale deeds to different persons for different areas rather it was agreed to sale the lands to the plaintiff no. 1. He never agreed to extend the period of execution of sale deed and the time was the essence of the contract which was never extended. It was also not agreed to produce certified copy of return submitted under the provision of land ceiling act and all this goes to show that the plaintiff no. 1 was never ready to purchase the land on payment of balance consideration amount within stipulated period. The plaintiff never made any payment subsequent to 15.02.1982 either to this defendant or to any other



defendants. The endorsement of extension of time incorporated in the said deed of agreement to sale is without the knowledge of this defendant. The allegations of the plaintiff regarding the purchase of stamp with consent of the defendants has been denied by this defendant further it has been denied that the plaintiff no. 1 was always ready to pay the balance consideration amount and was willing to get the sale deed executed. Reality is that the plaintiff no.1 was not able to arrange the balance consideration money and for that stranger plaintiff no. 2 has been introduced as the plaintiff no. 1 could not arrange balance consideration amount within stipulated period, therefore, he could not able to get the sale deed executed and registered in spite of repeated demand of defendant and the District Magistrate, Patna stopped the registration of the land after expiry of the stipulated period. Hence, the defendant cannot be held responsible for the same. The plaintiff no. 1 gave notice to the defendant with wrong, false allegation and malafide motives. The defendants never refused to accept any notice. It is also false to say that common friend and well wishers intervened into the matter and this defendant took time to finalize the matter. It is also wrong to say that this defendant wanted the price at the increased rate.

7. After amendment in the plaint by which paragraph 18A in the plaint was inserted additional written statement has also been filed by this defendant denying the allegations made in

that paragraph stating that the defendants of all the four sets are separate in mess, business and property. The allegation of the plaintiffs that due to non-execution of the sale deed by the defendants they suffered mental agony and torture is baseless and false and the plaintiffs are not entitled for any relief.

8. Defendant no. 2 has also filed separate written statement challenging the allegations of the plaint as also on the grounds taken by the defendant no. 1. There was no agreement for sale of the suit land between the defendants and plaintiff no. 2 rather the agreement was between the defendants and the plaintiff no. 1 and the sale deed was to be executed within three months. The subsequent insertion of new terms in the bai-beyana deed extending the period for executing the deed is outcome of fraud and forgery. The defendant no. 1 had no authority to extend the time of execution and registration of sale deed contrary to the terms already incorporated in the agreement to sale. The plaintiffs had no right to file the suit. The defendants never agreed to sale the suit land with stranger and time was the essence of the contract. The plaintiffs had never paid any single paisa to defendant no. 2 to 4 and accordingly, it has been prayed to dismiss the suit with cost.

9. On behalf of minor defendants no. 3 and 4, their guardian *ad-litem* appointed by the court also filed separate written statement praying to dismiss the suit with cost.

10. Learned Sub-judge on the basis of pleadings of the parties, framed following issues on re-cast :-

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- (i) Is the suit as framed maintainable ?
 - (ii) Is the suit barred by the law of limitation and also by the principal of waiver, estoppel and acquiescence ?
 - (iii) Is the suit bad for misjoinder of parties ?
 - (iv) Is the suit barred under Section 34 of the Specific Relief Act ?
 - (v) Whether the defendant no. 1 had received Rs. 50,000/- on 27.05.1982 under the bai-beyana deed and extended the period of bai-beyana deed up to 25.06.1982 ?
 - (vi) Whether the defendant no. 1 made an endorsement on 22.06.1982 promising to execute the sale deed within one month from receiving permission and whether the defendant had signed the urban land ceiling forms ?
 - (vii) Whether the defendants had committed breach of contract willfully, fraudulently and collusively for their illegal gain?
 - (viii) Whether the plaintiffs are entitled to decree for specific performance of contract for the land in suit with possession over it ?
 - (ix) Whether the plaintiffs are entitled for the cost of the suit with interest thereon at the rate of 18 % per annum ?
 - (x) Whether the plaintiffs in addition to grant for specific performance of contract, on account of their undue suffering and

illegal gain by the defendants, are entitled to ancillary relief of 18 % interest over the advanced money of Rs. 70,000/- received by the defendants.

(xi) Whether the plaintiffs purchased stamps with consent of the defendants and they suffered loss on account of non-execution of sale deed by the defendants and as such entitled for compensation of Rs. 1000/- ?

(xii) is the suit land agricultural and is its transfer prohibited or restricted under the Urban Ceiling Act ?

(xiii) To what relief or reliefs the plaintiffs are entitled to?

The learned Sub-Judge decided the issues and decreed the suit in part as stated above.

11. The defendants being aggrieved and dissatisfied with the judgment and decree have preferred this appeal challenging the maintainability of the same on the ground that the findings of learned Subordinate Judge on the issues are wrong, he has adopted different standards in weighing the evidence of PWs from that of the DWs, he has ignored the legal evidence on the record and has based his findings on conjectures and surmises. The rulings relied upon by the learned Sub-Judge has got no application to the facts of the present case. The suit land being agricultural land, there was no necessity to obtain permission and the plaintiffs have asserted in paragraph 19 of the plaint this fact



stating that the District Magistrate, Patna stopped the registration of land from 20.06.1982 and further they have asserted this fact in their legal notice (Ext. 6) dated 12.01.1983 and Ext. 6A dated 21.05.1983 and also filed Ext. 4 series permission forms and Ext. 5 series affidavits of vendors and vendee but the learned Sub-Judge committed errors on record in observing otherwise. Sections 26 and 27 of the Urban Land Ceiling Act has wrongly been interpreted by the learned Sub-Judge. If agricultural land of any area is exempted from mischief of Sections 26 and 27 of the Urban Ceiling Act, then practically no land can be acquired by the Government. The plaintiffs have got land beyond ceiling limit but the learned sub-Judge gave wrong finding that even if the plaintiffs hold land beyond ceiling limit, even then there is no bar to purchase the suit land if the land is agricultural. It was nobody's case that plaintiff no. 2 is added by plaintiff no. 1 at the instance of the defendant for avoiding Section 280 A (1) of Income Tax Act. Learned Sub-Judge has not considered Ext. 6 and Ext. 6A which was filed by the plaintiff. The learned Sub-Judge has committed apparent error in giving finding that plaintiff no. 2 was included as party to the suit at the instance of the defendants. The learned Sub-Judge has wrongly interpreted order 1 Rule IV and Order 1 Rule 10 (2) C.P.C. Learned Sub-Judge ought to have held that the suit is bad for misjoinder of plaintiff no. 2 and is not maintainable and further that the suit is barred by law of limitation. The learned



Sub-Judge ought to have held that time was the essence of the contract and as per the agreement to sale dated 15.02.1982 the stipulated period for execution of sale deed was till 15.05.1982 and the endorsement for extension of time on 22.06.1982 and payment made on 27.05.1982 after expiry of the period and as such the learned Sub-Judge ought to have held that the suit filed is not maintainable as the plaintiff was not ready to get the sale deed executed after paying the balance consideration amount, hence, he was not entitled to enforce the agreement to sale dated 15.02.1982. Papers relating to taking permission were in custody of plaintiff and it was maneuvering but the learned Sub-Judge after ignoring everything passed the judgment and decree which is not maintainable either in law or on the facts.

12. The learned Sub-Judge without giving any reasonable ground did not accept Ext. F. The learned Sub-judge has not rightly considered Ext. 10 series in coming to the findings that plaintiffs were ready to purchase the land. He ought to have held that the plaintiffs could not have ready money to purchase the land in suit and as such, finding to the contrary is wrong. Learned Sub-Judge ought to have dismissed the suit of the plaintiffs.

13. Learned senior counsel for the appellants arguing in this appeal submitted that time was the essence of the contract as per agreement dated 15.02.1982. It is manifestly clear vide



paragraph 3 thereof that the period of contract was for three months i.e. from 15.02.1982 to 15.05.1982 and if the purchaser fails to perform his part of contract, then in such a situation the advance money which has been given shall be forfeited and during that period no effort was made on behalf of the plaintiffs respondents or any payment was made during that period and as such, if any endorsement was made after that period cannot extend the period of time. Subsequent endorsement cannot be noticed by the court and as such, on this ground alone the suit was fit to be dismissed. Decree for specific performance is an equitable relief. Section 16 (c) of Specific Relief Act, 1963 speaks that "continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance, if the plaintiff fails either to offer aver or prove the same he must fail. Plaintiff is not only to require aver but also require to establish the fact by evidence which must be reliable evidence". In the present case the plaintiff failed from all corner and could not produce oral or any documentary evidence that he was ready and willing to perform his part of contract between 15.02.1982 to 15.05.1982. Further more there is no averments in the entire plaint that he was ready to get the sale deed executed latest by 15.05.1982, there is no averments that on a particular date between those period the plaintiff was ready or ever asked the defendants to execute and register the sale deed nor send any

notice in this regard. The plaintiff, PW 2, in paragraph 13 of his deposition, has admitted that he was not ready to get the sale deed executed after paying full balance consideration amount and as such, the plaintiff cannot claim relief under the Act.

14. Learned counsel has placed reliance upon a judgment reported in **2015(1) PLJR page 543** in the case of **Raj Kumar Singh Vs/ Madhuri Kumari @ Madhubala & Ors.** Further reliance has been placed upon a judgment reported in **2015 (2) PLJR page 42 (SC)** in the case of **Nan Jappan Vs. Ramasami & Ors.**, wherein the Hon'ble Apex Court has held that though decree for specific performance is discretionary, yet the court is not bound to grant relief merely because it is lawful to do so, discretion of the court should not be arbitrarily and is properly exercised keeping in view the settled principle of law envisaged in Section 20 of the Specific Relief Act. Further in paragraph 12 it has been held that jurisdiction of decreeing specific performance depends upon the facts and circumstances of each case, conduct of the parties, recitals in the sale agreement and the circumstances outside the contract have to be seen. In the present case the endorsement on the agreement that the sale deed will be executed within one month after obtaining permission, though the plaintiffs were very much aware of the fact that there was no necessity of obtaining permission because the land was agricultural land and moreover, it is the specific case of the

plaintiffs that the land is agricultural land but to linger the matter got incorporated those words in the agreement to sale to get some time to arrange money for execution of the sale deed.

15. In the present case due to non-performance of the plaintiffs their part of contract legal necessity frustrated and it remained only dream of the defendants to purchase agricultural lands after taking payment of this agreement to sale. Learned trial court has not framed any issue regarding willingness and readiness. Fixed deposits account goes to show that maturity period was ahead of the time and as such, the plaintiff has completely failed to prove that he was ready with the money within that period. Due to the act of the plaintiffs the object to sale the lands was frustrated as the appellants could not purchase agricultural land and also could not give proper education to the children thus, the plaintiffs are not entitled for relief as claimed by them. Further if this relief is not granted to them, it will not cause any injury or harm to them whereas, if such relief is granted, it will cause great prejudice or harm to the defendants appellants.

16. It has also been argued that the plaintiff no. 1 Laxmi Narayan Singh and his three sons are members of joint Hindu family and they have got land more than ceiling area under Urban Land Ceiling Act, 1976 and as such, for these reason also the plaintiffs were not in a position to purchase the lands covered under the agreement to sale in question and this fact is proved



from Ext. E, evidence shows that ceiling case was going on so the plaintiff could not have purchased the same in view of Sections 3 and 4 of the Urban Land Ceiling Act. The plaintiffs respondents nowhere pleaded that the transaction was for legal necessity or for the benefit of minors, there is no evidence that any such agricultural land was acquired, thus, the appellant no. 1/defendant did not take the money for legal necessity nor utilized the same for benefits of minors. On behalf of plaintiff there is no evidence in this regard and when there is no evidence to prove legal necessity, the plaintiff will fail because it was his duty to prove it to bind the minors. It has been argued that if an agreement is not proved to be for legal necessity, it cannot be enforced against minors and for that reliance has been placed upon a judgment reported in **1961 BLJR page 137** in the case of **Bageshwari Prasad Duivedi v. Deopati Kuer**. In the present case time was not extended according to the terms of the agreement so Under Section 73 (1) of the Contract Act it became voidable at the instance of the vendors. There is no case nor any fresh documents after 15.05.1982, therefore, this contract is not enforceable. It has also been argued that in this appeal as no stay was granted and as such decree has been executed and accordingly sale deed has been executed but on this ground the merit of the appeal cannot be frustrated. The appeal is the continuation of the suit and result of it will reverse back. *Broom Maxim* says that the validity of

whatever done by the court below is in the issue in the appeal. It is well settled that a matter, the validity of which is in issue cannot be set up as bar there.

17. On the other hand, on behalf of respondents, it has been submitted that the learned trial court has rightly decided all the issues and there is no illegality. The findings of the learned court below is quite correct and justified and did not require any interference by this Court. Time was not the essence of the contract as the same is for immovable property and agricultural land. Single line in paragraph 13 of PW 2 taking in cross-examination cannot be taken as admission. The evidence must be read as a whole and then it is proved that the plaintiff was always ready and willing to perform his part of contract. In the written statement, the defendants did not admit the subsequent endorsement made on the agreement to sale wherein further advance was received and further endorsement was made that after obtaining permission after one month, the sale deed will be executed but during evidence it has been admitted by DW 1 paragraph 1, & 5, DW 2 in paragraph 4, Defendant no. 1. Sant Lal Singh DW 5 in paragraph 8 & 12. Therefore, challenging the said endorsement and signature has no legs to stand and further those signature and endorsement was sent to Forensic Science Laboratory for test and vide PW 4 the report was proved whereby it has been proved and established that the hand writing of



endorsement and signature on the back of the first page of agreement for sale are of the defendant no. 1 (appellant no. 1) and moreover now it has become admitted fact. PW 8 has also been examined and he has also found another endorsement and signature on the back of the first page of agreement for sale as of the defendant no. 1 and in this regard also the admission of defendant no. 1 has also come on record. The another important admission in evidence of PW 3 (paragraph 3) is that the defendant no. 1 is the karta and manager of his respective family and that the land in question is the agricultural land. Further defendant no. 1 being DW 5 in paragraph 10 has categorically admitted that he is not ready to execute the sale deed in terms of the agreement for sale because of the price of the land has gone higher. It has been argued that in view of those admissions of defendant no. 1 himself and another witnesses, the entire case of the plaintiffs respondents stands admitted making the plaintiffs respondents entitled for the decree of specific performance of contract of agreement for sale. The agreement for sale is Ext. 2 and all writings of endorsement and signatures appearing thereon of defendant no. 1 have been proved and accepted. Even on the corrections made there is signature of Sant Lal Singh. The deposition of Nagendra Singh who was examined as DW 1 in Title Suit No. 92 of 1984 has been exhibited as Ext. 17 and in paragraph 11, 12, 14, 15 and 16 he has admitted the entire case of the plaintiff and has contradicted



all the contentions of the defendants. Mahednra Pratap Singh who was examined in Title Suit No. 93 of 1984, his deposition has also been exhibited as Ext. 17A and he also in paragraph 1 and 2 has made vital admissions in favour of the plaintiffs respondents against the defendants appellants. Ext. 10 series are the documents of bank showing financial status of plaintiffs respondents and his competency to pay the total consideration money and to get the sale deed executed, thus, the plaintiff has proved that he was ready and willing to perform his part of contract. The argument of the learned counsel for the appellants that the plaintiff in his plaint has not pleaded readiness and willingness which is necessary for a suit for specific performance nor has been able to show any evidence for their readiness and willingness and the court below without considering the same has erroneously decreed the suit appears not tenable. Provisions of Section 16 (c) does not require any specific phraseology and it is only required that there should be pleading in any word to show that the plaintiff was ready to pay the money and to get the sale deed executed in terms of the agreement for sale and for that reliance has been placed upon a judgment reported in **(1999) 6 SCC 337** paragraph 9 and 13 in the case of **Sayed Dastagir Vs. T. R. Gopala Krishna Setty**. Similar principle has been reiterated in **(2006) 12 SCC page 147** paragraph 2 and 4 in the case of **Faquir Chand & Anr. Vs. Sudesh Kumari**. Further placing



reliance upon **(2004) 6 SCC page 649** paragraph 19, 20, 24, 25 and 28 in the case of **P.D.'souza vs. Shondriolo Naidu**, it has been argued that the readiness and willingness on the part of the plaintiffs even in case of delay having occurred on account of the acts of the defendants shall not put adversely effected, rather it will treated that there has been readiness and willingness with the plaintiff to get the sale deed executed in terms of the agreement for sale. It has also been argued that for readiness and willingness money is not required to be ready in hand and for that reliance has been placed upon **(2009) 17 SCC page 27** paragraph 31 in the case of **Azhar Sultana Vs. B. Rajamani & Ors.** It has also been argued that for considering the readiness and willingness on the part of the plaintiff to perform his part of contract would also depend upon the question as to whether the defendants did everything which was required of him to be done in terms of the agreement for sale and for that reliance has been placed upon the judgment reported in **(2011) 1, SCC 429** paragraph 24 and 45 in the case of **J. P. Builders and Anr. Versus Ramadas Rao and Anr.** The Apex Court in paragraph 45 has also taken into consideration that for showing the financial capacity the money in fixed deposit and saving accounts and statements of bank are relevant fact. It has also been argued that the time is not the essence of the contract as in the agreement to sale in question it is incorporated that the transaction of sale should be completed



within three months of the execution of the agreement which would be extended if it is so required and for that reliance has been placed upon a judgment reported in **(2008) 4 SCC page 464** paragraph 10, 11, 12 and 14 in the case of **Balasaheb Dayandeo Naik (dead) through LRS & Ors. Vs. Appasaheb Dattatraya Pawar**, wherein it has been held that the time was not the essence of the contract. Further it has been argued that readiness and willingness of the plaintiffs is to be seen by taking into consideration of the circumstances that if the defendant was always trying to wriggled out of the contract and that lead to the suit hence, the plaintiff cannot be directed to pay any additional amount while granting the specific performance and for that reliance has been placed upon a judgment reported in **(2002) 5 SCC page 481** paragraph 45 in the case of **Nirmala Anand Vs. Advent Corporation (P) Ltd. & Ors.**

18. On the basis of rival contentions of the parties, the point for consideration in this appeal are as follows:

- (i) Whether the time was the essence of the contract ?
- (ii) Whether the agreement to sale was executed for legal necessity ?
- (iii) Whether the plaintiff was ready and willing to perform his part of contract and whether the suit has been rightly decreed ?

19. Point No. (i):- The agreement to sale (Ext. 2)



contains the terms which had been agreed upon that the transaction of sale should be completed within three months of the execution of the agreement which would be extended if it is so required. It also contains that the vendee would get the sale deed executed in parts either in his name or in the name of his other associates for proportionate values and if the vendors required more money before the execution of the sale deed, then they could take further advance on this very agreement. Further the land to be sold would be measured and the payment of the price would be finally calculated accordingly. The vendors would produce certified copy of returns and Jamabandi returns etc. for verification of area or title and allied matters. It is also incorporated that the sellers would transfer the suit land after receiving the balance consideration money and in case the sellers refused to sale the suit land then the purchasers would have absolute right to take any suitable action in the court of law for getting the land transferred in their names by due process of law.

20. Now it has become admitted fact that after the said agreement for sale on the request of the defendants, the plaintiff respondent also made payment as an advance subsequently and endorsement in that regard has been made by defendant no. 1 as Karta and Manager of family on the back of page no. 1 of agreement to sale and further when the District Magistrate, Patna stopped the registration of land in that locality from 20.06.1982,



the defendant no. 1 made further endorsement on 22.06.1982 on the back of the first page of agreement for sale that he would execute the sale deed within a month, after the permission is obtained from the competent authority. Thus, from this document which is an admitted document itself, it is evident that time was not the essence of the contract. The Hon'ble Apex Court in the case of **Balasaheb Dayandeo Naik** (*supra*) has been pleased to hold that in a suit for agreement for sale with regard to immovable property time is not the essence of the contract and in this case the clauses and endorsement of Ext. 2 clearly shows that the time was treated as not the essence of the contract. In view of the specific terms incorporated in Ext. 2, the argument advanced by the learned counsel for the appellants appears not tenable and accordingly, it is held that the time was not the essence of the contract. In the result, this point is decided against the appellants and in favour of the respondents.

21. Point No. (ii):- During evidence it has been admitted by DW 3 (paragraph 3) that defendant no. 1 and similarly other defendant no. 1 of other respective suits are all Karta and Manager of their respective family and the defendant no. 1 and his co-sharers wanted to dispose of their lands being in legal necessity to arrange marriage, purchase land, to meet the cost of education of children and other pressing needs of the family and accordingly, they had decided to sale the said lands and



negotiated with plaintiff no. 1 and finally it was agreed upon that the land will be sold by them at the rate of Rs. 11,500/- per Kattha, tentatively total value of which was Rs. 2,00,560/-. Thus, from Ext. 2 which is an admitted document, it is proved that the agreement to sale was executed for meeting the legal necessity and in evidence it has further been admitted that the advance money so taken was utilized for that purpose. PW 2 in paragraph 16 said that the defendant no. 1 has purchased the land with that money but it is true that no details of the land purchased by the defendants has been furnished but defendants did not give any evidence on this point. However, from Ext. 2 itself it is proved that the transaction was for legal necessity and for the benefit of minors also. It is not the case of the defendants that the defendant no. 1 was in bad habit and was not taking care of minors. The rulings relied upon by the learned counsel for the appellants reported in 1961 BLJR page 137 is not applicable in the present case. Here the facts of the case is on quite different footing. Accordingly, it is held that agreement to sale in question was executed for meeting the legal necessity.

22. Point No. (iii):- In Ext. 2 it is also mentioned and it was agreed upon by both the parties that the plaintiff no. 1 may purchase the land in suit in the names of different persons for different area on the basis of different sale deeds. It is also incorporated therein that period of three months would be



extended if required and if the defendants will require further money, the advance will be given. It was also incorporated in Ext. 2 that actual price would be payable to the defendant on the basis of actual measurement of the land but the price will remain same. Thus, the parties were entitled to extend the time of execution of sale deed if required and it is an admitted position that the District Magistrate, Patna issued an order resulting confusion arose in the minds of the parties that the permission was essential for execution of the sale deed. The defendant no. 1 took further advance after making endorsement which has been admitted by him during evidence and further made endorsement that the sale deed will be executed within one month after obtaining permission which has been marked as Ext. 3 and 3/A respectively. Payment of further advance to the defendant no. 1 by the plaintiff no. 1 vide Ext. 3 goes to prove that the plaintiff was ready and willing to perform his part of contract. Paragraphs 17 and 23 of the plaint are important in this regard. The witnesses examined on behalf of plaintiffs have also fully corroborated and supported the aforesaid stand of the plaintiff that the plaintiff no. 1 was all along ready to perform his part of agreement and to get the sale deed executed in his favour after making payment of the rest of the consideration amount to the defendants. Subsequent payment made after 15.02.1982 to the defendant, purchase of stamp for execution of the sale deed, swearing of affidavit for obtaining permission and



further legal notice sent by plaintiffs show the eagerness for performing his part of agreement. The proof of capacity of the plaintiff no. 1 to make payment showing the bank accounts and further filing of the suit supports the contention of the plaintiff. The plaintiff was ready for making the payment of balance consideration money but the same could not be done as the defendants were not ready to execute the sale deed in spite of repeated demand made by the plaintiff, though more than Rs. 70,000/- has already been taken as an advance. Legal notice which has been proved also goes to show the readiness and willingness on the part of the plaintiff to perform his part of contract. Further purchase of stamp by the plaintiff for getting the sale deed executed and as the stamp could not be used and then the plaintiff had to refund the same after sustaining loss vide Ext. 9 and 9/A. Thus, it has been proved that the plaintiff was always ready and willing to perform his part of contract and further Ext. 3 and 3/A also show the readiness, wiliness and eagerness. It also goes to show that the plaintiffs were anxious to get the sale deed executed as soon as possible in their favour by the defendants after making the balance consideration amount. PW 2 the plaintiff no. 1 in his evidence has also fully corroborated the same. PW 3 has also supported the aforesaid contention of the plaintiff that the plaintiffs were ready and willing to perform their part of contract so that the sale deed may be executed in their favour. PW 3 has



further stated in paragraph 5 that the plaintiff no. 1 approached the defendants for executing the sale deed to which the defendants said that permission was essential. PW 5 has also supported the entire case of the plaintiffs. PW 6 in his evidence has fully supported and corroborated the case of the plaintiffs. On the other hand, the submission and evidence on behalf of defendant is that the plaintiffs were not ready and willing to purchase the land in question and for that the letter alleged to be written by Dr. Laxmi Narayan Singh the plaintiff no. 1 to the defendant dated 28.10.1986 has been brought on record which has been marked as Ext. F, on which basis it is stated that the plaintiff no. 1 has asked the defendants to execute the sale deed of lands in question with M/s. Kaneria Construction Private Limited, Frazor Road or its nominee or nominees and on this ground it is stated that the plaintiff was not ready and willing to perform his part of contract. This letter has been challenged by the plaintiff as forged one as it is not pleaded in the written statement and it has been created after filing of the suit during evidence, this was never presented nor attention was drawn to Dr. Laxmi Narayan Singh who was examined as PW 4 in Title Suit No. 92 of 1984 and 94/84. The letter was referred to the expert on behalf of the plaintiff who has reported that letter in question is forged one whereas the expert examined on behalf of defendant has opined that the signature on the same is in the writing of Dr. Laxmi Narayan



Singh. This letter has been marked as Ext. F on the basis of evidence of DW 7. DW 7 in cross-examination has said that the first line of the said letter which has been typed letter in which the word 'for purchase' has been written by Dr. Laxmi Narayan Singh and it has also been signed by him but the signature and the word 'for purchase' are definitely in two different ink and by two different pens and it is written by two different persons which is visible by necked eye. The defendant no. 1 is examined as DW 5 on 31.05.1988 who has also not stated about the existence of this letter and further the suit has been filed in the year 1984 itself and as such, after filing of the suit no occasion arose for writing the letter by plaintiff no. 1. Learned trial court has rightly disbelieved this letter Ext. F and thus it is held that the plaintiff was always ready and willing to perform his part of contract and the defendants evaded the matter on one pretext or the other.

23. Reliance placed by the learned counsel for the appellants in the case of **Raj Kumar Singh** (*Supra*) is not applicable in the present case. In that case the defendant has denied the execution of agreement to sale by her and receipt of Rs. 10,000/- as earnest money. She has also denied to have got the stamp purchased by Ram Kripal Singh. Further reliance placed upon in the case of **Nan Jappan** (*supra*) is also not helpful for the appellants as here the facts of the case are on quite different footing. In that case, the suit property was the only property of



the appellant defendant and the appellant was said to have constructed house and where he is currently residing with the family. In the present case the land in question is not the only property of the appellants defendants and they are not residing therein by constructing house, so the appellants will not suffer significant hardship if a decree for specific performance is granted against the appellants.

24. Learned trial court after considering the oral and documentary evidence adduced on behalf both the parties and further considering the submissions of the parties and also taking into consideration the law points has rightly decreed the suit and I am in agreement with the findings of the learned trial court. Having more lands than the ceiling limit in urban Area by the plaintiff is no bar to purchase agricultural land outside the urban Area. The learned Sub-Judge has rightly held in this regard. Accordingly, this point is also decided against the appellants and in favour of the respondents.

25. The reliance placed by the learned counsel for the respondents plaintiffs in the case of **Faquir Chand** (*supra*) is relevant for deciding as to whether in the facts and circumstances of the case the respondents plaintiffs are liable to pay additional amount or not. In paragraph 5 of the said judgment, the Hon'ble Apex Court has been pleased to direct the respondents to pay the appellants additional amount of Rs. 1,00,000/- within three



months. Further reliance can be placed upon a judgment reported in **(2015) 1 SCC 597** paragraphs 13 to 18 in the case of **K. Prakash V. B. Ra. Sampat Kumar** wherein it has been held that subsequent rise in the price will not be treated as hardship entailing refusal of the decree for specific performance. Rise in price is a normal change of circumstance and therefore, on that ground decree for specific performance cannot be reversed. Here also during the pendency of the suit price has risen and the balance consideration amount remained in the hands of the respondents plaintiffs and they utilized the same for their own benefit. Therefore, in my view, the appellants defendants are to be suitably compensated. I, therefore, direct the respondents plaintiffs to pay to the appellants defendants sum of Rs. 5,00,000/- (five lacs) within four months from today in the court below, failing which the suit filed by the respondents plaintiffs for specific performance of contract shall stand dismissed automatically. If the amount is paid within the time as stipulated above, the sale deed executed through the process of the court shall be treated as valid and the appellants defendants shall not make interference in peaceful possession of the suit property to the respondents plaintiffs. The appellants defendants will be at liberty to withdraw the aforesaid amount if already deposited by the respondents plaintiffs in the court below.

26. It is an admitted fact that during the pendency of



this appeal, the decree has already been executed and the sale deeds have already been executed, accordingly, in favour of plaintiff no. 1 after deposit of entire balance consideration money payable thereunder and the possession of land has also been delivered to the plaintiff respondents. There had been four Title Suits including the present one as the agreement for sale by all the four persons was executed and while the appeals have been preferred, the appellant of one of the appeal bearing F.A. No. 419 of 1996 did not pursue the same resulting F.A. No. 419 of 1996 has been dismissed and only three appeals remained pending for hearing on merit and disposal.

27. In the result, finding no merit in this appeal, the same is hereby dismissed on contest with aforesaid direction and observation but under the circumstances without cost.

(Jitendra Mohan Sharma, J)

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