

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Second Appeal No.211 of 2013**

Chandrawati Devi W/O Yogendra Parit And D/O Late Sheopujan Parit And Yashoda Devi Resident Of Village- Sherpur, P.S- Daraunda, District- Siwan, At Present Resident Of Sukul Toli, Mohalla Near Brahma Asthan, P.S- Siwan Town, District- Siwan.

..... (Defendant ..... Appellant)

.... .... Appellant

Versus

Bibhuti Tiwary S/O Late Singhashan Tiwary Resident Of Dakhin Tola Siwan, P.S- Siwan Town, District- Siwan.

..... (Plaintiff ..... Appellant)

.... .... Respondent

**Appearance :**

For the Appellant/s : Mr. AJAY KUMAR PANDEY

For the Respondent/s : Mr.

**CORAM: HONOURABLE MR. JUSTICE V. NATH**

**ORAL JUDGMENT**

**Date: 27-03-2015**

Heard learned Counsel for the appellant.

2. The defendant is the appellant in this Second Appeal against the judgment and decree of affirmance.

3. The suit has been filed by the plaintiff for specific performance of contract for reconveyance of the suit land after receiving the consideration money.

4. The facts are not in dispute that the suit land originally belonged to the plaintiff. By sale deed dated 25.1.1988 the plaintiff sold the suit land to the original defendant (since deceased through L.R.). On the same date another deed was executed, whereby the defendant agreed to reconvey the suit land to the plaintiff and the time of reconveyance was fixed to be three years. It is the case of the plaintiff that several times he approached the defendant for execution of the sale deed but the defendant avoided the same on one pretext or the other and

ultimately refused to execute the sale deed as agreed, re-conveying the suit property to the plaintiff. The suit has admittedly been filed on 27.2.1991.

5. The defendant contested the claim of the plaintiff and has mainly asserted that as the time fixed for reconveyance was three years which had expired, the plaintiff's right has stood forfeited.

6. Both the courts below have, after scrutiny of the pleadings and evidence, reached to the concurrent finding that the plaintiff has always been ready and willing to perform his part of the contract, but the defendant avoided the execution of the sale deed. The suit was decreed and thereafter the appeal has been dismissed.

7. Learned Counsel for the appellant has made the sole submission that the plaintiff could not have been granted the relief as the period of three years has already expired. Learned Counsel has placed reliance on the decision of the Apex Court in the case of **Raj Kishore v. Prem Singh (2011) 1 SCC 657**, for the submission that in cases of agreement for re-conveyance the time is essential factor and it cannot be extended once after it has expired. No other submission has been made on behalf of the appellant.

8. After considering the judgment of both the courts below and the submission on behalf of the appellant it is pellucid that the agreement to reconvey the property has been admitted by the defendant and it has also been admitted that the time of such performance was fixed to be three years. It is the case of the plaintiff that he approached the defendant several times for execution of the sale deed, as agreed, but the defendant avoided the same. The parties led their evidence on



this issue and the courts have recorded the concurrent finding that the plaintiff had approached the defendant for execution of the sale deed but the defendant avoided the same. In fact, both the courts below have come to the conclusion that the plaintiff had always been ready and willing to perform his part of the contract. During the course of submission this finding has not been assailed nor does this Court also find this finding to be unreasonable or perverse.

9. In this backdrop, the submission on behalf of the plaintiff on the basis of the decision of the Apex Court in the case of **Raj Kishore** (supra) has to be considered. Their Lordships in this decision have held that in cases of agreement for re-conveyance the time has to be taken the essence of the matter. However, in the said decision it has nowhere been laid down that after the expiry of the said period the plaintiff's right to get the re-conveyance would stand forfeited even if the plaintiff succeeds in establishing the valid tender within the said period and his readiness and willingness to perform his part of contract. To the contrary their Lordships in paragraph 31 have observed as follows:-

“31. The courts below have concurrently held that the plaintiff had failed to prove that he had tendered the amount of Rs. 6000 to the purchaser within the date stipulated in the agreement for reconveyance. That being a finding of fact any claim for reconveyance made in default of the said stipulation must fail, for the right of reconveyance cannot in the case of default be saved from forfeiture.”

10. In this view of the matter, this Court does not find substance in the submission on behalf of the appellant that the plaintiff's right stood forfeited for ever and he would not have been granted the decree, as prayed, even after establishing his readiness and willingness to perform his part of the contract.

11. Ex consequenti, this Court does not find any substantial question of law arising for consideration in this Second Appeal, which is, accordingly, dismissed.

**(V. Nath, J.)**

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