

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.208 of 2013

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Rajendra Singh @ Gajo Singh, son of Late Mahabir Singh, resident of Harpur
Chand alias Chandharpur, Pergana Kasma, P.S. Kalyanpur, District Samastipur
..... Defendant Appellant

.... Appellant

Versus

Umesh Prasad Singh, son of Late Nageshwar Prasad Singh, resident of Village
Harpur Chand alias Chandharpur, Pergana Kasma, P.S. Kalyanpur, District
Samastipur
..... Plaintiff Respondent

.... Respondent

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Appearance :

For the Appellant/s : Mr. SUSHIL KUMAR JHA

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 13-07-2015

Heard Mr. Jha, learned Counsel appearing on behalf of the
appellant in support of this appeal. Learned Counsel for the respondent
is present.

2. The defendant is the appellant in this appeal against the
judgment and decree of affirmance granting the decree for specific
performance of contract for sale of the land to the plaintiff, as prayed.

3. The fact of execution of the registered agreement for sale
(Mahdanama) on 26.2.2004 is admitted by the defendant. By the said
agreement, the defendant agreed to execute a sale deed in favour of the
plaintiff for the suit land measuring 7 Katha 7 Dhur by 31.3.2007 for a
total amount of consideration of Rs. 1,50,000/-, out of which the payment
of Rs. 1,25,000/- has been made by way of advance. The resistance to
the decree for specific performance of contract, as prayed by the plaintiff,
has been made by the defendant firstly on the ground that the agreement



for sale (Mahdanama) was executed by way of security of a loan, which the defendant took from the plaintiff for treatment of his ailing wife. Secondly, it has been stated that the value of the suit property is much more than what has been mentioned by way of consideration and, therefore, the valuation of the suit has been wrongly given by the plaintiff. It is also the case of the defendant that he was always ready and willing to return the loan amount of Rs. 75,000/- to the plaintiff.

4. The trial court returned the finding on the material issues in favour of the plaintiff and granted the decree for specific performance of contract. In appeal by the defendant, the appellate court on reappraisal of evidence has concurred with the findings of the trial court and dismissed the appeal.

5. Mr. Jha, learned Counsel appearing for the appellant, has submitted that both the courts below have erred in law in not considering the aspect that the date 31.3.2007 was fixed for performance of the contract and therefore when the plaintiff did not perform his part of the contract within the said time, which included purchase of the stamp from treasury for registration of the sale deed etc, the right to maintain the suit for specific performance of contract is extinguished. Elaborating his submission, Mr. Jha has propounded that the time is essence of the contract in such cases and therefore the decree for specific performance of the contract ought not to have been granted. It has also been submitted that the agreement for sale was by way of securing the loan from the plaintiff and the defendant never intended to enter into contract for sale of the land. Mr. Jha has also argued that the valuation of the suit property is much more higher but the courts below have not considered

this aspect.

6. After considering the submissions and perusal of the judgments of the courts below, it is manifest that the deed of agreement for sale (Ext. 1), which is a registered document, has been admitted to have been executed by the defendant. Although the case of the defendant was that the plaintiff had obtained his signature on the blank papers but the same has not been substantiated as the agreement for sale in question does not carry only the signature of the defendant but also the recital therewith regarding the execution of the deed of agreement for sale. Both the courts below after scrutiny of evidence have reached to the conclusion that the defendant has failed to substantiate his case, as pleaded in the written statement. Even otherwise also, in view of the provisions contained in Sections 91 and 92 of the Evidence Act, no evidence was admissible in variance or inconsistency with the terms mentioned in the registered deed (Ext. 1).

7. Learned Counsel for the appellant has also failed to point out any pleading by the defendant – appellant in the written statement that the parties intended to make time the essence of the contract. It is now well settled that in cases of agreement relating to transfer of immovable property time is not essence of the contract and the reference in this regard may be made to the law laid down in the case of **Gomathinayagam Pillai & ors. Vs. Palaniswami Nadar, 1967 SC 868** and in the case of **Smt. Chand Rani vs. Smt. Kamal Rani, 1993 SC 1742**. On behalf of the appellant, no material on record has been pointed out to persuade this Court to align with the submission that the parties intended to make time the essence of the contract.

8. So far as the submission with regard to the valuation of the suit is concerned, Section 7(x) of the Court Fee Act requires the value of the consideration money to be the valuation of the suit in a suit for specific performance of contract. The submission that the actual market value of the suit property should have been the valuation of the suit, therefore, cannot be accepted.

9. 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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