

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.379 of 2008

=====

Ramadhar Tiwari, Son of Late Ragho Tiwari, Resident of Village-
Chaksaidkari, P.S.-Hazipur Sadar, District- Vaishali.

-Plaintiff/Appellant/Appellant.

Versus

Suresh Bhagat, Son of Late Surya Bhagat, Resident of Village-Mztaraya,
present Akbar Malahi, P.S.& P.O.- Sarai, District- Vaishali.

-Defendant-Respondent-Respondent.

=====

Appearance :

For the Appellant/s : Mr. Nageshwar Prasad Sinha
Mr. Bindeshwari Prasad Sinha

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

5 24-09-2015

Heard Mr. Nageshwar Prasad Sinha, the learned

counsel appearing on behalf of the appellant.

The plaintiff is the appellant in this appeal
against the judgment and decree of affirmance dismissing the suit
for specific performance of contract.

The plaintiff filed the suit seeking specific
performance of contract for sale against the defendant. It was the
prayer of the plaintiff in the suit that a measurement of the land be
done and the remaining amount be determined and directed to be
paid to the defendant accordingly by a decree of specific
performance of contract against the defendant. The base of the
plaintiff's claim was an oral agreement for sale of the land. The
defendant appeared and contested the prayer of the plaintiff

denying the fact of agreement for sale which the plaintiff had asserted.

The trial court returned the findings on the issues against the plaintiff and dismissed the suit. In appeal by the plaintiff, the appellate court below has concurred with the findings of the trial court and dismissed the appeal by the impugned judgment and decree.

Mr.Sinha, the learned counsel for the appellant has raised the proposition that the appellate court below has committed error of law in rejecting the material evidence on behalf of the plaintiff. It has been posited by the learned counsel that the learned appellate court below has wrongly invoked the provision of Section 14(1) (c) (d) of the Specific Relief Act in refusing to determine the area of the land and the sale price to be payable to the defendant. It has also been submitted by the learned counsel that there was preponderance of probability in favour of the plaintiff for grant of decree as prayed but both the courts below have committed error in declining to grant the decree to the plaintiff as prayed. It has been next submitted by the learned counsel that though the judgment and orders passed in the criminal proceeding is not admissible in a civil action between the parties

but the documents filed in criminal cases could have been admitted in evidence and relied upon. It has thus been submitted that the error committed by the courts below raises substantial question of law in this appeal for consideration.

After perusal of the impugned judgments and considering the submissions, it is manifest that the plaintiff has filed the suit asserting oral agreement for sale with the defendant for the land whose area was also prayed to be determined and the consideration money to be ascertained. The prayer of the plaintiff in this regard was for an appointment of Pleader Commissioner for the said purposes for determining the area of the land to be sold and the quantum of the consideration money in accordance with that. Both the courts below have analyzed the evidence of the parties in detail before coming to the conclusion that the plaintiff has failed to establish the oral agreement for sale of the land with the defendant. It is also apparent from the impugned judgments that the documents relating to the criminal proceeding between the parties have been admitted in evidence as Exts.2 to 8 on behalf of the plaintiff. However the submission in this regard by the learned counsel for the appellant proceeds on misconception between the admissibility of a document in evidence and its probative value.

Both the courts below have found, in view of the denial of the defendant of conscious knowledge of the facts mentioned in the bail petition and affidavit filed in the criminal proceeding, that the plaintiff has failed to prove that the defendant had put his signature on those documents after having full knowledge of the contents. The courts below have also taken into notice the statement made by the plaintiff himself in paragraph-25 that he filed the criminal case against the defendant only because there was no evidence of oral agreement for sale. The appellate court below has rightly taken into notice the principle in this regard as discussed in ***Lalmuni Devi Vs Jagdish Tiwary , A.I.R. 2005 Patna 51*** that the standard of proof in a criminal case is different from that in a civil case. The relief in a suit for specific performance of contract is discretionary and in view of Section 20 of the Specific Relief Act, the Court is not bound to grant the relief even if it is lawful to do so. In the present case, both the courts below after considering the entire facts, circumstances and evidence alongwith the conduct of plaintiff have declined to grant the relief as prayed. This Court has not been persuaded to find the findings unreasonable or perverse in any manner.

Ex consequenti, this Court comes to the

conclusion that no substantial question of law is arising in this appeal for consideration. This appeal is, accordingly, dismissed.

(V. Nath, J)

Nitesh/-

U			
---	--	--	--

