

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.121 of 2013

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1. Subodh Kumar Singh S/O Late Nagendra Singh R/O B/1, Vaishnawi Apartment, Sadakat Ashram, Police Station Patliputra, District - Patna
2. Vinod Kumar Singh S/O Late Nagendra Singh R/O C/1, Vaishnawi Apartment, Sadakat Ashram, Police Station Patliputra, District - Patna
3. Pramod Kumar Singh S/O Late Nagendra Singh R/O D/1, Vaishnawi Apartment, Sadakat Ashram, Police Station Patliputra, District - Patna

.... Appellant/s

Versus

1. Smt. Nilam Singh W/O Sri Rajesh Kumar Singh R/O Mohalla - Haripur Colony, Police Station Digha, District - Patna

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Sudhir Kumar, Adv.

For the Respondent/s : M/s. Onkar Nath & Ritesh Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 09-10-2015

Heard counsel for the appellants and the Respondent.

I.A.No.2195 of 2013 has been filed for condoning the delay in filing the appeal.

This Court is satisfied with reasons mentioned in the limitation petition. Accordingly the delay is condoned and the limitation petition is allowed.

In the present case, appellants are challenging the order dated 28th September 2012 passed in Title Suit No. 192 of 2011 whereby and whereunder the court below has granted interim injunction preventing the defendant to evict the plaintiff from the suit premises as well as during the pendency of the suit, not to alienate the property in dispute.

Conflicting facts are emerging in the present case, as the plaintiff is claiming to have given substantial amount in pursuance of an agreement to purchase the suit land vide different transactions. It has been claimed that the

parties have agreed to sell the property for consideration amount of Rs.42,00,000/- out of which Rs.28,26,000/- has been given.

Counsel for the respondent submits that substantial amount has been paid even during the pendency of the suit and has also submitted that one of the appellants has recognized the agreement between the parties and has accepted the amount from time to time whereas counsel for the appellants denies this fact.

From the report, the facts are emerging that Nagendra Singh was father of the present appellants. As per claim of the appellant, he has started the business in which the respondent was inducted as tenant but on the contrary claim the respondent took the disputed land for running business, accordingly respondents started its business on the basis of written agreement as well as oral agreement.

The relief sought for by plaintiff-respondent is based on unregistered document dated 28th February 2009 claiming part performance/specific performance of contract and claiming protection from eviction invoking provisions of Section 53A of the Transfer of properties Act.

In contra counsel for the appellants submits that as the so called agreement is unregistered in view of Section 17A of the Act unless the agreement is registered one, he can not claim protection as provided under Section 53A of the T.P.Act.

In support of his contention, counsel for the respondent placed reliance on the judgments 1009(4) PLJR 385 and 2010(1) PLJR 317 whereas counsel for the appellants placed reliance on the judgments reported in AIR 1981 Mad. 310, 1991 PLJR 661 and AIR 1987 Pat.102.

In the present case, counsel for the appellants has submitted that so far alienation of the property, undertaking has been given by the appellants

that they will not alienate the property during the pendency of the suit. It has been pointed out that the lease agreement arrived is with respect to 1 katha 5 dhurs of land for that eviction suit vide Eviction Suit No. 41 of 2012 is pending and there the court below has directed the present respondent to deposit the rent of 1 katha 5 dhurs and rejected the claim of the present appellants that the lease property under the present respondent was 3 katha and odd.

Counsel for the respondent submitted that when the appellants themselves admitted in the written statement having given lease of 3 katha and odd, they cannot now resile and take a plea that the land under lease was only 1 katha 5 dhurs but it is admitted fact that the court prima facie found the lease of 1 katha 5 dhur on that basis the court directed the present respondent to deposit the rent of the suit land under lease. So taking holistic view of the matter, both the parties are changing their stand from time to time as at one place they say 3 katha and odd and at another place 1 katha 5 dhurs, admittedly lease deed is only for 1 katha 5 dhurs.

In the present case, the court has granted injunction for whole of the land, admittedly the agreement for sale for 6 katha that too based on unregistered document this Court in 2009(4) PLJR 385 has elaborately dealt with the issue with respect to the status of unregistered document with respect to claim for specific part performance of contract. For specific performance of contract, there is no need for registered document, in terms of Registration Act as well as Section 53A of the Transfer of Properties Act. The question registered document would arise with respect to claiming protection of possession under Section 53A of the T.P.Act. If the status of the document is registered, in terms of judgment AIR 1981 Madras 310, it can be used as a shield and not as a sword. In view of language given in Section 53A of the T.P.Act, it will be proper to follow the

Bombay judgment :AIR 1994 Bom.254 which says that if the document is registered, then protection under Section 53A will be granted as shield but also as sword. Specific performance of contract has been claimed on the strength of unregistered document. So he can pursue the matter for specific performance of contract but he cannot claim protection of possession on the basis of unregistered document.

Admittedly, in the present case, eviction suit has been filed confining the lis to 1 katha 5 dhurs and the court has given direction to the respondent of the present appeal to deposit the rent. This Court is of the view that the present appellants can only evict the respondent with respect to 1 katha 5 dhurs by process of law, not by exercising any physical force or other illegal method. With regard to granting relief of injunction with respect to other portion of land is set aside.

As has been asked by the parties that the suit is in advance stage, the court below to avert complexity of the present case, is directed to dispose of the same as early as possible, preferably within a period of nine months from the date of receipt/production of copy of this order.

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(Shivaji Pandey, J)