

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.240 of 2010

Kanti Devi, wife of Jamuna Mahto and daughter of Late Eknath Mahto, resident of
Village- Raikaran Bigha, P.S. Ekangarsarai, P.O. Ekangarsarai, Distt. Nalanda

.... Appellant/s

Versus

1. Brijnandan Prasad
2. Rameshwar Prasad, both are sons of Ram Sahay Singh
3. Ranjan Kumar (Minor) son of Babu Parmanand Prasad under the guardianship of his father and his well-wishers, Babu Parmanand Prasad, all are residents of village Mai, P.S. Hilsa, District-Nalanda Plaintiff Respondents 1st set
4. Chandeshwar Prasad
5. Mahesh Prasad Singh, both are sons of Dasrath Mahto
6. Ajay Kumar
7. Ananda Kumar
8. Anjani Kumar, all three are minors son of Chandeshwar Prasad under the guardianship of his father and his well wishers Chandeshwar Prasad
9. Santosh Prasad, minor son of Mahesh Prasad Singh, under the guardianship of his father and his well wishers Mahesh Prasad Singh, All Sl. Nos. 5 to 9 are residents of village- Mai, P.S. Hilsa, Distt.- Nalanda .. Defendant 2nd Set.... Resp. 2nd Set.
10. Rina Devi, wife of Late Rajendra Prasad
- 10(a). Guria Kumari
- 10(b) Niki Kumari, both minor daughter of late Rajendra Prasad Singh U/G of their natural mother namely, Rina Devi being well wishers and near friend
11. Mosmat Rajo Devi, W/o Late Arjun Prasad Singh, resident of village- Mai, P.S. Hilsa, Distt.- Nalanda
12. Sabita Kumari, W/o Sri Rakesh Kumar, resident of Mohalla & P.S.- Kumhrar, Distt. Patna
13. Sarvesh Prasad, All three are the sons of Babu Todraj Mahto
14. Dilip Kumar (Major)
15. Munna Kumar (Major) both are minor sons of Arjun Prasad Singh under the guardianship of his father and well wishers Arjun Prasad Singh
16. Tipu Kumar (Major)
17. Pappu Kumar (Major) both are son of Sarvesh Prasad under the guardianship of his father and well wishers Sarvesh Prasad, All Sl. Nos. 10 to 16 are resident of village- Mai, P.S. Hilsa, Distt. Nalanda. Defendants 3rd party
.... Respondents 3rd party.

Appearance :

For the Appellant/s : Mr. KUMAR MRITYUNJAY NARAIN

For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 15-10-2015

Heard Mr. Yogendra Prasad Sinha, learned counsel

appearing for the appellant.

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

3. The suit was filed by the plaintiffs for decree of specific performance of Contract for sale against the defendant Punia Devi (since deceased through L.R.) with regard to the suit land. It was the case of the plaintiffs that Punia Devi had executed an agreement for sale on 11.8.1987 in favour of the plaintiffs for the sale of the suit land for a total consideration of Rs. 1,23,000/-, out of which Rs. 45,000/- was paid in advance to the defendant. It was also the case of the plaintiffs that later on the defendant demanded Rs. 13,000/- which was also paid by the plaintiffs. After the refusal by the defendant to abide by the terms of the agreement for sale and to execute the sale deed, the suit was filed with the aforesaid relief.

4. The defendant denied the execution of the agreement for sale of the suit land with the plaintiffs as alleged. It was the case of the contesting defendant that the agreement for sale was created fraudulently when the son-in-law of the defendant with ill motive obtained the thumb impression of the defendant Punia Devi on some blank papers. The contesting defendant also denied to have received any amount by way of consideration money from the plaintiffs.



5. The trial court returned the findings in favour of the plaintiffs and held that the agreement for sale as propounded by the plaintiffs was a genuine document and further also held that the plaintiffs had paid the amount of Rs. 45,000/- and Rs. 13,000/- by way of advance. The trial court, accordingly, directed the defendant to execute the sale deed in favour of the plaintiffs by passing a decree for specific performance. In appeal by the defendant, the appellate court below after reappraisal of evidence has concurred with the findings of the trial court and dismissed the appeal.

6. Mr. Yogendra Prasad Sinha, learned counsel appearing for the appellant has strongly submitted that though the plaintiffs have claimed to have paid Rs. 45,000/- and Rs. 13,000/- by way of advance but the said facts have not been established by the plaintiffs by leading cogent evidence. It has been posited by the learned counsel that even after accepting that the agreement for sale was a genuine document, still the plaintiffs were required to establish at least the readiness and willingness to perform their part of the contract in view of the provision under Section 16 (C) of the Specific Relief Act. It has been convassed that in the present case though the payment of an amount of Rs. 45,000/- has been mentioned in the agreement for sale but there is absence of cogent evidence with regard to payment of the amount of Rs. 13,000/- by way of advance.



Elaborating his submissions, learned counsel has further pointed out that in view of the findings of the trial court that there is no documentary evidence for payment of Rs. 13,000/- and in absence of any documentary evidence for payment of the said amount, both the courts below should not have relied upon the version of the plaintiffs to have paid altogether Rs. 58,000/- in advance. It has also been submitted that both the courts below have not properly considered the evidence on record and have wrongly granted the decree to the plaintiffs as prayed.

7. After perusal of judgments of both the courts below and consideration of submissions, it is manifest that the plaintiffs have prayed for decree of specific performance of contract on the basis of an agreement for sale executed by the defendant. The plaintiffs have claimed that the total consideration amount as agreed was Rs. 1,23,000/- out of which Rs. 45,000/- was paid by way of advance at the time of execution of the agreement for sale dated 11.8.1987 and Rs. 13,000/- was paid later on. The plaintiffs have stated in the plaint that they are ready to pay the remaining consideration amount and get the sale deed executed. The appellate court below has come to specific finding in para-2 of the judgment that altogether Rs. 45,000/- and Rs. 13,000/- have been paid by the plaintiffs to the defendant by way of advance. The submission on

behalf of the appellant that there is no documentary evidence to establish the payment of Rs. 13,000/- and as such the said fact could not be accepted to have been established, is clearly misconceived for two reasons. Firstly, the documentary evidence is not the exclusive mode to prove a fact and secondly it is not the case of the defendant that the plaintiffs have withheld any relevant documentary evidence to the said fact. The payment of Rs. 45,000/- has been mentioned in the agreement for sale (Ext.1) and the oral evidence has been led by the plaintiffs to establish the payment of Rs. 13,000/-. The finding of the appellate court below on the issue of payment of Rs. 13,000/- is based on appraisal of oral evidence in that regard. On behalf of the appellant, it could not be shown that the conclusion of the appellate court below on the basis of oral evidence was unreasonable or perverse in any manner. The possibility of another view on reappreciation of evidence cannot be a ground for interference at the second appellate stage..

8. 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)

S.Pandey/-

U			
---	--	--	--