

THE HIGH COURT OF TRIPURA
AGARTALA

RSA NO.16 OF 2006

Smti. Premika Ghosh(Deb) alias Gita Deb,
W/O. Shri Arabinda Deb,
At present residing at
C/O. Laxmi Tea Co. Ltd.,
Unit-Manu Tea Factory,
P.O. Manu Valley, P.S. Kailashahar,
District-North Tripura,

..... **Defendant Appellant.**

- V e r s u s -

Smti. Pratima Saha,
W/O. Late Gopal Chandra Saha,
Shib Bari, P.S. Dharmanagar,
District-North Tripura.

..... **Plaintiff Respondent.**

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant : Mr. S.M. Chakraborty,
Sr. Advocate,
Ms. P. Sen, Advocate.

For the respondent : Mr. P. Roy Barman,
Advocate,
Mr. K. Nath, Advocate.

Date of hearing and : 17.01.2015.
delivery of judgment
and order.

Whether fit for reporting : **NO.**

JUDGMENT & ORDER (ORAL)

This second appeal is directed against the judgment dated 31-03-2006 delivered by the learned Additional District Judge, North Tripura, Dharmanagar in Title Appeal No.28 of 2005 whereby he dismissed the appeal of the appellant (defendant) and

upheld the judgment dated 22-06-2005 passed by the Civil Judge (Sr. Division), North Tripura, Dharmanagar in Title Suit No.03 of 2005 whereby he decreed the suit of the respondent (plaintiff) for specific performance of contract.

2. Briefly stated, the facts necessary for disposal of this appeal are that the defendant Smt. Premika Ghosh was owner of the suit land and it is not disputed that an agreement was entered into between the plaintiff and the defendant on 07-07-2004 which is duly signed by them whereby the defendant agreed to transfer this land in favour of the plaintiff for a total consideration of Rs.1,25,000/-. The sale deed was to be executed by 30-12-2004. According to the plaintiff, she was always ready and willing to perform her part of the contract and a few days before 30-12-2004 she contacted the defendant and her brother and they told her that there was some problem with regard to the boundary of the land and the sale deed would be executed at a later date. Thereafter, the defendant started avoiding to execute the sale deed on one pretext or the other. This led to the filing of the suit.

3. The defendant did not dispute the execution of the agreement but the stand taken by the defendant was that, in fact, the amount of Rs.70,000/- as depicted to have been paid at the time of execution of the agreement to sell had not actually been paid to her. It was also contended that the plaintiff was never ready and willing to perform her part of the contract. It would be pertinent to mention that the defendant filed her written statement and also filed her affidavit as examination-in-chief but never

appeared thereafter for cross-examination and, therefore, her statement cannot be taken into consideration. As far as the plaintiff is concerned, she stepped into the witness box and supported her case in toto. Her case has also been supported by PW-2, one of the attesting witnesses to the agreement to sell who has clearly stated that at the time of the execution of the sale deed, a sum of Rs.70,000/- was paid by the plaintiff to the defendant. He has also supported the version of the plaintiff on other counts with regard to her being ready and willing to perform her part of the contract. As far as PW-3 is concerned, his statement is not very relevant because he was admittedly not present at the time of the execution of the sale deed. He, however, does support the plaintiff to the effect that the plaintiff had approached the brother of the defendant for execution of the sale deed.

4. This regular second appeal was admitted on the following substantial questions of law:-

(i) Whether the liability to prove the part payment in a case for specific performance of contract is required to be discharged by the plaintiff beyond all doubts?

(ii) Whether in a suit for specific performance of contract the ever readiness and willingness of the plaintiff to discharge her obligation are required to be averred and proved by the plaintiff?

(iii) Whether a civil court before passing a decree for specific performance of contract should satisfy itself as to the existence of all required conditions for passing such decree?

5. It is contended by Sri S.M. Chakraborty, learned Sr. Counsel for the defendant-appellant, that issues which arose from the pleadings were not framed. He mainly prayed that (i) no issue was framed as to whether the plaintiff was ready and willing to perform her part of the contract; and (ii) no issue was framed with regard to non-payment of Rs.70,000/-.

6. The issues as framed are omnibus issues and one of the issues framed was, "Is the plaintiff entitled to get decree as prayed for?" True it is that the issue should have been more specific but in a case where the defendant has not even cared to appear in the witness box to face cross-examination and no prejudice has been caused to her because the plaintiff has specifically pleaded and proved both the issues. The parties were alive to the situation and knew what was the dispute and no prejudice has been caused.

7. Both the Courts below have come to concurrent finding of fact that the plaintiff had paid Rs.70,000/- at the time of execution of the agreement to sell and she was always ready to perform her part of the contract. This finding of fact is based on the evidence led by the plaintiff and cannot be interfered with in a Second Appeal. Therefore, I am of the opinion that none of the substantial questions as framed on 23-06-2006 are substantial questions of law nor do they, in fact, arise in the present case.

8. In my opinion, no question of law much less substantial question of law arises in this regular second appeal which is accordingly dismissed with no order as to costs.

9. Send down the lower court records forthwith.

CHIEF JUSTICE