

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10412 of 2013

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Nishant Kumar Raj, S/O Baijanti Prasad, Resident Of Mohalla - Alamganj, P.S. Alamganj, Patna City, Patna

.... Petitioner

Versus

1. Kanhaiya Yadav, Son Of Late Bhola Prasad Yadav, Resident Of Mohalla - Begam Ki Haweli, P.S. Khajekalan, Patna City, Patna
2. Om Prakash Yadav, Son Of Late Bhola Prasad Yadav, Resident Of Mohalla - Begam Ki Haweli, P.S. Khajekalan, Patna City, Patna
3. Kishore Yadav, Son Of Late Bhola Prasad Yadav, Resident Of Mohalla - Begam Ki Haweli, P.S. Khajekalan, Patna City, Patna

.... Respondents

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Appearance :

For the Petitioner : Mr. D.K. Sinha, Sr. Advocate
: Mr. Abhinay Raj, Advocate
For the Respondents : Mr.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 06-09-2016

Heard learned counsel for the petitioner. Gone through the order impugned.

Learned counsel for the petitioner/ plaintiff has submitted that considering the averments having been made on behalf of respondents/ defendants that they have entered into negotiation with the plaintiff with regard to the land and further, after finalization thereof, they received earnest money and further, executed deed of agreement. Therefore, on that very basis, the defendant be directed to execute sale deed after receiving the balance amount in terms of Order 12 Rule 6 of the Code of Civil Procedure. Because of the fact

that the learned lower court in the order impugned had perceived the statement of the respondents/ defendants that manifold enhancement has been seen with regard to land, on account thereof, the *lis* requires thorough adjudication.

Learned counsel for the petitioner has submitted that in terms of Order 12 Rule 6 of the Code of Civil Procedure, judgment could be pronounced on an admission. Therefore, having admission at the end of the respondents/ defendants with regard to negotiation, with regard to finalization, with regard to receipt of earnest money and with regard to agreement having executed at their end then, in that event, there was no hurdle before the learned lower court while taking contrary view. In an alternative, it has also been pleaded that in the background of aforesaid admission, the learned lower court should have dealt with the present controversy on the preliminary issue to avoid regale of the trial as well as to save the precious time.

Asking for relief of Specific Performance and grant thereof, happens to be based upon the discretion of the Court in terms of Section 20 of the Specific Relief Act.

That being so, plaintiffs could not stick/ insist on that very score. Furthermore, during consideration, the Court could direct the refund of money along with interest having incurred thereupon during course of adjudication. Thus, *lis* could be exercised while

proceeding with the trial in its entirety. As such, the order impugned did not require interference.

Consequent thereupon, the instant petition is rejected.

(Aditya Kumar Trivedi, J.)

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