

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.148 of 2014

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Panna Lal Singh son of Late Nathuni Lal Singh resident of village and Post Office
Kharika Police Station Sonapur, District - Saran.

.... Appellant

Versus

Mahadev Sah, Son of Chaturi Sah, Resident of village and Post Office- Kharika
Police Station Sonapur, District-Saran .

.... Respondent.

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Appearance :

For the Appellant/s : Mr. Najmul Hoda, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 21-09-2016

Heard Mr. Najmul Hoda, learned counsel appearing
for 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 for specific performance
of contract on the basis of agreement for sale dated 10.04.1977
claiming the same to have been executed by the defendant no.1
Shivnath Mahto. During the pendency of the suit the defendant no.1
Shivnath Mahto died and his name was expunged on the prayer of the
plaintiff but no substitution of his heirs and legal representatives was
made in the suit which was however contested by the defendant 2nd

set.

Both the courts below have come to the finding that the suit for specific performance of contract as filed by the plaintiff cannot proceed in absence of the defendant no.1 or after his death his heirs and legal representatives on record. Both the courts below further also have concluded that the plaintiff has failed to establish his readiness and willingness to perform his part of the contract with regard to which even there was no averment in the plaint. The suit was dismissed and thereafter the appeal filed by the plaintiff has also been dismissed by the appellate court below.

During the course of submission, Mr. Hoda, learned counsel for the appellant could not show any provision of law or precedent to persuade this Court that the findings by the courts below that the suit for specific performance of contract could have been decreed even in absence of the heirs and legal representatives of the vendor who died during the pendency of the suit.

After perusal of the judgments of both the courts below, it becomes demonstrably clear that the findings by the learned courts below are recorded on the basis of pleadings and evidence of the parties and this Court has not been persuaded to find any perversity or unreasonableness in the same.

Ex consequenti, there is no substantial question of

law is arising for consideration in this appeal, which is, accordingly,
dismissed.

(V. Nath, J)

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