

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8913 of 2014

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Keshay Prasad Son of Late Chandrika Sah Resident of Village Mangal Bazar,
Ward No.4, P.O.and P.S. Nasariganj, District - Rohtas

.... Petitioner.

Versus

Udai Kumar Gupta Son of Shri Madhaw Prasad Resident of Village Mangal Bazar,
Ward No.4, P.O.and P.S. Nasariganj, District - Rohtas

.... Respondent.

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Appearance :

For the Petitioner/s : Mr. Akhouri Vipin Bihari Shrivastava, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 26-04-2016

V.Nath, J.

Heard Mr. Akhouri Vipin Bihari Srivastava, learned
counsel for the petitioner.

The present application under Article 227 of the
Constitution of India has been filed assailing the order passed by the
learned court below whereby the prayer of the plaintiff to lead
secondary evidence by producing the photo copy of the agreement of
sale has been allowed.

The suit has been filed for specific performance of
contract by the plaintiff against the defendant on the basis of an
agreement for sale. During the pendency of the suit a petition was
filed by the plaintiff for directing the defendant to produce the original
copy of the agreement for sale before the court. The defendant denied



to have any copy of the agreement for sale much less original copy of the agreement for sale. The court below thereafter dismissed the prayer of the petitioner. It transpires further that the plaintiff again made a similar prayer later on and this time the court below again in view of the denial by the defendant rejected the prayer of the plaintiff. The plaintiff thereafter filed the petition for permission to lead the photo copy of the said agreement for sale in evidence. By the impugned order the learned court below has allowed the said prayer of the plaintiff.

Mr. Srivastava, learned counsel appearing for the defendant-petitioner has been emphatic in his submission that the plaintiff has made such a prayer after a long delay and that too at the stage when the evidence of both the parties have been closed. It has been accepted by the learned counsel, however, that the stand of the defendant-petitioner throughout has been that the copy of the alleged agreement for sale never existed and had never been in possession of the defendant-petitioner. The learned counsel has contended that the learned court below has committed error of jurisdiction and material irregularity in permitting the plaintiff to produce the photo copy of the agreement for sale as secondary evidence in the suit at belated stage.

After considering the submissions and the materials on record, it is evident that the suit has been filed for specific



performance of contract by the plaintiff on the basis of an agreement for sale. It is also apparent that the plaintiff has in his possession the photo copy of the said agreement of sale and the said document had been filed by the plaintiff in the suit alongwith other documents at the initial stage. However, the prayer for accepting the said document (photo copy of the agreement for sale) as secondary evidence has been made only after the categorical refusal by the defendant with regard to possession or even existence of the said agreement for sale. In this view of the matter when the crucial issue in the suit is the existence of agreement for sale between the plaintiff and the defendant for sale and purchase of the suit land, the importance of the copy of the agreement for sale cannot be undermined. The provision of Section 65 of the Evidence Act can be invoked only in a case when the original is not with the party and its non-production in evidence by the party is first accounted for as provided in the said provision. After the denial of the defendant regarding the existence and possession of the said document, the learned court below has committed no illegality or error of jurisdiction in allowing the acceptance of the copy of that document as secondary evidence. It is also evincible from the provisions of Sections 65 and 66 of the Evidence Act that the delay cannot be a ground for allowing the prayer for adducing secondary evidence. This Court, therefore, does not find substance in the submission on behalf

of the petitioner.

This writ application is, accordingly, dismissed.

(V. Nath, J)

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