

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.253 of 2014

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Rajbansh Sah Son of Late Jagarnath Sah Resident of Village- Basantpur, P.S.-
Bhagwanpur, District- Kaimur at Bhabua.

..... Defendant Respondent

.... Appellant

Versus

Sunil Kumar Agrawal Son of Kapoor Chand Agrawal Resident of Village-
Bhagwanpur, P.S.- Bhagwanpur, District- Kaimur at Bhabua.

..... Plaintiff Appellant

.... Respondent

with

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Second Appeal No. 116 of 2015

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Rajbansh Sah son of Late Jagarnath Sah Resident of Village - Basantpur , Police
Station - Bhagwanpur , District - Kaimur at Bhabua.

..... Plaintiff Appellant

.... Appellant

Versus

Sunil Kumar Agrawal son of Kapoor Chand Agrawal Resident of Village -
Bhagwanpur , Police Station - Bhagwanpur , District - Kaimur at Bhabua.

..... Defendant Respondent

.... Respondent

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Appearance :

(In SA No.253 of 2014)

For the Appellant/s : Mr. Jitendra Prasad Singh

For the Respondent/s : Mr.

(In SA No.116 of 2015)

For the Appellant/s : Mr. Jitendra Prasad Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 28-10-2016

Heard Mr. Jitendra Prasad Singh, learned Counsel for the
appellant in both the appeals.

2. On the prayer of the learned Counsel for the appellant both
the appeals i.e. S.A. No. 253 of 2014 and S.A. No. 116 of 2015 have
been taken up together.

3. The relevant matrix of facts is that the suit land belonged to



the defendant-appellant. The plaintiff came out with the case that by registered agreement for sale dated 8.9.1997 the defendant agreed to sell the suit land with the plaintiff for total consideration money of ₹.40,000/-, out of which ₹ 25,000/- was paid by the plaintiff to the defendant. On refusal of the defendant to execute the sale deed in accordance with the agreement for sale the suit was filed by the plaintiff for a decree for specific performance of contract for sale against the defendant.

4. The defendant contested the assertion of the plaintiff and also denied the legality validity and genuineness of the agreement for sale. The defendant also filed his own suit bearing T.S. No. 166 of 1998 for declaration that the agreement for sale was fraudulent, illegal, inoperative and not a genuine document.

5. Both the suits i.e. the suit filed by the plaintiff for specific performance of contract and the suit filed by the defendant questioning the legal validity of the agreement for sale were tried together and by a common judgment the suit filed by the plaintiff was decreed by directing the defendant to execute the sale deed after receiving the balance consideration money. It would be pertinent to notice that the plaintiff's case of payment of ₹ 25,000/- by way of advance towards the consideration money was disbelieved by the trial court holding that only an amount of ₹ 6000/- had been paid by the plaintiff to the defendant out of the consideration money. The suit filed by the defendant, however, was dismissed.

6. The plaintiff of T.S. No. 22 of 2000 (suit for specific performance of contract) preferred appeal against the part decree



questioning the finding on the payment of ₹. 6000/- only by way of advance and asserting that the trial court ought to have held that altogether ₹ 25,000/- was paid by way of advance out of the consideration money. It would be significant here to notice that no appeal or cross-objection was filed by the defendant-appellant against the findings of the trial court in the suit for specific performance of contract. However, the defendant –appellant filed appeal only against the judgment and decree by which his suit I.e. T.S. No. 166 of 1998 was dismissed.

7. The appeal filed by the plaintiff against the part decree in his suit for specific performance of contract has been allowed by the judgment and decree which has been challenged in S.A. No. 253 of 2014, wherein the appellate court has reversed the finding of the trial court regarding payment of ₹.6000/- only by the plaintiff to the defendant by way of advance and has held that the plaintiff had paid altogether ₹.25,000/- to the defendant by way of advance towards the consideration money. It is also relevant to note here that it is not the case on behalf of the appellant in this appeal i.e. S.A. No. 253 of 2014 that the impugned judgment and decree has not been passed after hearing the parties.

8. By the judgment and decree challenged in S.A. No. 116 of 2015 the appellate court below has affirmed the finding of the trial holding the legal validity of the agreement for sale and dismissed the appeal. This appeal has been filed after a delay of 185 days along with the Interlocutory Application (I.A. No. 6178 of 2015) praying for condonation of delay in filing the appeal.



9. Mr. Singh, learned Counsel for the appellant in both the appeals, after some argument has accepted the legal position in face of the fact that the defendant-appellant did not prefer any appeal or cross-objection against the findings against him in the suit for specific performance of contract and as such the findings recorded therein were operating as res judicata against the defendant-appellant. Though the submission has been made on behalf of the appellant that the finding by the courts below upholding the genuineness of the agreement for sale (Ext. 5) has been rendered ignoring the material evidence on record but it has been again fairly submitted by the learned Counsel for the appellant that in view of the disposal of both the suits by common judgment the finding could not have been assailed in absence of the appeal or cross objection.

10. The learned Counsel had also placed the Interlocutory Application (I.A. No. 6178 of 2015) for condonation of delay in S.A. No. 116 of 2015 and canvassed that the delay has occurred due to wrong and misconceived advice to the appellant regarding filing of the second appeal.

11. This Court after considering the submissions and the facts and circumstances of the case is not persuaded to find that the appellant has established sufficient cause for condonation of delay in filing the S.A. No. 116 of 2015. The specious plea raised on behalf of the appellant that he became aware of the necessity of filing the second appeal later on cannot be reasonably countenanced in the backdrop that the appellant had filed his own T.S. No. 166 of 1998 and had also filed the appeal thereafter which was also heard and disposed of



independently. This Interlocutory Application (I.A. No. 6178 of 2015) is dismissed. The S.A. No. 166 of 2015 is accordingly dismissed as barred by limitation.

12. While considering the submission in S.A. No. 253 of 2014 it is apparent that the appeal in the court below was filed by the plaintiff only against the part of the judgment and decree pertaining to the dispute about the payment of ₹. 25000/- out of the consideration money by way of advance or ₹ 6000/- as held by the trial court. As the defendant-appellant did not prefer any cross-objection this Court is not inclined to entertain the plea touching the legal validity of the agreement for sale. So far as the finding with regard to payment of ₹ 25,000/- by way of advance as recorded by the appellate court below, this Court finds that the conclusion by the appellate court below on this point has been reached on elaborate consideration of the evidence which were acceptable and could have been relied upon. This Court has not been persuaded to find any perversity or unreasonableness in the same.

13. Ex consequenti, this Court comes to the conclusion that there is no substantial question of law arising for consideration in this appeal, i.e. S.A. No. 253 of 2014.

14. In the result, both the second appeals are dismissed.

(V. Nath, J.)

Snkumar/-

AFR/NAFR	
CAV DATE	N/A
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