

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3669 of 2013

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Sheikh Mukhtar Son Of Late Sheikh Mukhtar Resident Of Village - Jogia,
P.S. - Ram Nagar, District - West Champaran Petitioner.

Versus

Sheikh Ehsanullah Son Of Md. Jan Resident Of Village - Jogia, P.S. - Ram
Nagar, District - West Champaran Respondent.

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Appearance :

For the Petitioner/s : Mr.Rajendra Narayan, Sr.Adv.

Mr. Sunil Kumar Dubey, Adv.

For the Respondent/s : Mr. Bimlesh Kumar Pandey, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

4 08-02-2016

Heard Mr. Rajendra Narayan, the learned senior

counsel appearing for the defendant-petitioner and the learned
counsel for the respondent.

Calling in question the legal sustainability of the
impugned order by which the learned court below has turned
down the prayer on behalf of the defendant for rejection of the
plaint under Order 7 Rule 11(d) C.P.C., the present application
under Article 227 of the Constitution of India has been filed.

The T.S.No.84/2011 has been filed by the
plaintiff and from the perusal of the plaint (Annexure-1) , it is
manifest that the prayer has been made for execution of a
registered sale deed by the defendant on the basis of Mahadnama
dated 29.05.1997 with regard to suit property described in
Schedule-I of the plaint. The further relief is for confirmation of



possession of the plaintiff over the suit property. The petition was filed by the defendant for rejection of plaint on two grounds, firstly, that as the Mahadnama dated 29.05.1997 was not a registered document, the suit was not maintainable for the relief as claimed by the plaintiff and secondly that the suit was barred by limitation as the same has been filed for specific performance of contract after lapse of 14 years. The court below has rejected the said petition filed on behalf of the defendant.

Mr. Narayan, the learned senior counsel appearing for the defendant-petitioner has submitted that in view of the amendment in the Registration Act in 2001 introducing Section 17 A, the Mahadnama was required to be registered after the said amendment and unless the same had been done, the suit is not maintainable. It has also been canvassed that the suit has admittedly been filed after 14 years of the date of Mahadnama and therefore in view of the Article 54 of the Limitation Act, the suit is barred by limitation.

The learned counsel for the plaintiff-respondent has supported the impugned order.

After careful consideration of the matter and the submissions on behalf of the parties, it is apparent that the



Mahadnama has been executed on 29.05.1997 and the same is an unregistered document. It is also the case of the plaintiff that he was put in possession over the suit land in part performance of the said contract. However, the requirement for registration of an agreement for sale accompanied with possession has been introduced by amendment in the year 2001. The said provision was not in existence in the year 1997. The submission by the learned senior counsel for the petitioner that the plaintiff ought to have got the document registered subsequently is not supported by any such requirement in law. The fact has also not been disputed that there was no fixed date for performance of the agreement and therefore even in view of the Article 54 of the Limitation Act, the date of refusal to perform the contract is the prescribed starting point for limitation. The issue of limitation, moreover, is a mixed question of law and fact and in view of the facts as pleaded in the plaint, the jurisdiction to reject the plaint under Order 7 Rule 11 (d) C.P.C. has rightly been not exercised by the court below. In this view of the matter, this Court does not find that any illegality or error of jurisdiction has been committed by the learned court below in rejecting the prayer on behalf of the defendant-petitioner for rejection of plaint under Order 7 Rule 11(d) C.P.C.

The writ application is, accordingly, dismissed.

(V. Nath, J)

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