

IN THE HIGH COURT OF JUDICATURE AT PATNA
First Appeal No.99 of 2012

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Against the judgment and decree dated 30.03.2012, decree sealed and signed on 13.04.2012 passed by Sri Hari Shankar, the then Sub-Judge VIII, Patna in Title Suit No. 427 of 2004.

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1. Saroj Sinha W/O Late Ramchandra Prasad Sinha R/O Mohalla-Weaker Section 1/7, Kankarbagh Housing Board Colony, P.S.-Kankarbagh, Town And District- Patna Appellant

Versus

1. Dr. Sharangdhar Prasad S/O Late Krishna Prasad, R/O A/110, Kankarbagh, P.S.- Kankarbagh, At Present At The Pines, 13, West Bourn Road, Edghaston Birmingham 815 Sir, United Kingdom Through Sri Aganidhar Prasad, Retired Addl. Director Of Industries, Bihar, R/O 4h/74, Bahadurpur Housing Colony, Bhutnath Road, P.S.- Agamkuan, Town And District- Patna, Authorised Attorney

2. Sri Dinanath Gupta S/O Late Baidnath Sah The Husband R/O A/53, Housing Colony, Lohiya Nagar, P.S.- Kankarbagh, Distt.-Patna

3. Sri Umesh Prasad S/O Dinanath Gupta R/O A/53, Housing Colony, Lohiya Nagar, P.S.- Kankarbagh, Distt.-Patna

4. Sri Mahesh Prasad S/O Dinanath Gupta R/O A/53, Housing Colony, Lohiya Nagar, P.S.- Kankarbagh, Distt.-Patna

5. Sri Ramesh Prasad S/O Dinanath Gupta R/O A/53, Housing Colony, Lohiya Nagar, P.S.- Kankarbagh, Distt.-Patna

6. Durgesh Prasad R/O A/53, Housing Colony, Lohiya Nagar, P.S.- Kankarbagh, Distt.-Patna

.... Respondents

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Appearance :

For the Appellant : Mr. Ganpati Trivedi, Sr. Advocate
Mr. D. Chaubey, Advocate
Mr. R. K. Sinha No. 2, Advocate

For the Respondents: Mr. J. K. Verma, Advocate
Mr. Pankaj Maijorwar, Advocate
Mr. Anjani Kumar, Advocate
Mr. Abhishek Anand, Advocate

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

C.A.V. JUDGMENT

Date: 25-10-2016

The instant appeal has been filed against the judgment and decree dated 30.03.2012, decree sealed and



signed on 13.04.2012 passed by Sri Hari Shankar, the then Sub-Judge VIII, Patna in Title Suit No. 427 of 2004 whereby and whereunder the suit was dismissed on contest and counter claim of the defendant was decreed with direction to the plaintiff to vacate the suit premises within one month and also to pay rent at the rate of Rs. 1200/- per month regarding arrears of rent, failing which the defendant will be entitled to get the suit premises vacated and to realize the arrears of rent through the process of the court.

2. The plaintiff is the appellant and the defendants are the respondents.

3. The plaintiff has filed this suit for decree of specific performance of contract against the defendants with regard to property as mentioned in Schedule I of the plaint in her favour and to direct the defendant no. 1 Dr. Sarangdhar Prasad to get the sale deed of the suit property registered in her name by obtaining permission to sale it to the plaintiff after accepting the remaining amount of consideration money i.e. Rs. 5,00,000/- within time limit fixed by the court, failing which plaintiff may be directed to deposit Rs. 5,00,000/- in the court and the sale deed may be got registered and executed through the process of the court and the plaintiff may be put in possession over the suit land through the process of the court. Further to direct the defendant to pay the cost of the suit and other reliefs to the plaintiff.



4. Briefly stated, the case of the plaintiff is that the defendant Dr. Sarangdhar Prasad is an allottee and owner of land mentioned in Schedule I of the plaint. Dr. Sarangdhar Prasad himself has settled in United Kingdom and does not intend to return to India. Last time he was seen in India in the year 2000 when the defendant came to India lastly in the year 2000, the plaintiff was a tenant of the portion of the house in dispute. The defendant announced publicly to sale the disputed property, then the plaintiff expressed her desire to purchase the suit property from the defendant and proposed to pay Rs. 10,00,000/- as its consideration amount. There was no any other purchaser to purchase the said property for that value, therefore, this proposal between the plaintiff and defendant was finalized but as the suit house was not registered by the Bihar State Housing Board in favour of the defendant, the sale deed could not be executed. The defendant had to live very few days in India and he had to get the final deed of transfer of the disputed land in his favour to execute the sale deed to the plaintiff after obtaining permission for it. Within such short time it was quite impossible. The plaintiff agreed to suggestion of the defendant that out of the total amount of the consideration money, the plaintiff would pay Rs. 5,00,000/- to him and he assured that after returning to United Kingdom, he would execute power of attorney to his brother Agnidhar Prasad to this effect that after getting the final deed registered in the



name of defendant and obtaining permission to sale the disputed land to the plaintiff, he would accept the remaining amount of consideration money Rs. 5,00,000/- and execute the registered sale deed in favour of the plaintiff. As per settlement, the plaintiff paid Rs. 5,00,000/- as advance money to the defendant Dr. Sarangdhar Prasad and he executed the deed of agreement to sale and as partial compliance of the agreement, he gave possession over the ground floor of the suit property to the plaintiff and went to United Kingdom leaving India in the month of November. As per his promise, Dr. Sarangdhar Prasad sent a power of attorney executed in favour of his brother Agnidhar Prasad. When the plaintiff came to know about the power of attorney, she made contact with Agnidhar Prasad who assured her to get the sale deed registered in her favour after the deed of transfer was registered in favour of the defendant. But the plaintiff came to know that Agnidhar Prasad is misusing the said power of attorney for unjust and illegal gain and was also negotiating to sale the disputed land at a high rate. Knowing this, the plaintiff went to him taking photocopy of agreement for sale and asked him to execute the registered sale deed on the basis of Bai-Beyana executed by his brother Dr. Sarangdhar Prasad during his stay in India. On this, he got infuriated and tore the said copy of agreement for sale and asked the plaintiff to go out of his house forthwith. Thereafter, notice was served on behalf of



plaintiff to Agnidhar Prasad in respect of filing of suit against him for not executing the sale deed in spite of plaintiff being ready to pay the remaining amount of consideration money and granted him time for one month to get the deed of transfer registered in the name of defendant Dr. Sarangdhar Prasad and execute it in favour of the plaintiff after obtaining permission to sale it but Agnidhar Prasad did not fulfill her demand and returned the notice in connivance with the postman. Further the case of the plaintiff is that as per agreement for sale, she is ready to get the sale deed executed of the suit land in her favour after making payment of balance consideration amount of Rs. 5,00,000/- but the defendant has failed to comply with the agreement and is avoiding the same. The cause of action arose to the plaintiff on 13.10.2000 when the defendant executed the deed of Bai-Beyana in favour of the plaintiff after accepting Rs. 5,00,000/- from her as advance money and again the cause of action arose to the plaintiff finally on 05.09.2004 when Agnidhar Prasad the attorney of the defendant denied to execute the sale deed of the disputed land in favour of the plaintiff. Since the disputed property is situated in the jurisdiction of the court, the present suit has been filed here. The suit valued at Rs. 10,00,000/- and required court fee has been deposited for the same, therefore, this suit has been filed against defendant and his attorney Sri Agnidhar Prasad.



5. On behalf of defendant Dr. Sarangdhar Prasad, his attorney Agnidhar Prasad, in whose favour he executed power of attorney, appeared before the court and filed his written statement. He has stated that the suit of the plaintiff is not maintainable, the plaintiff has got no reason to bring the suit and whatever reason has been stated is quite false and concocted. The suit of the plaintiff is barred by law of limitation, waiver and acquiescence and the law of estoppel. The defendant also stated that the plaintiff has not made the Bihar State Housing Board and Ram Sakhi Devi wife of Dina Nath as party, hence, the suit suffers from defect of non-joinder of parties. Further case of the defendant is that he is the allottee of the land and premises described under schedule I of the plaint. Due to some technical difficulties, the sale deed could not be registered in his favour, the defendant comes to India whenever he needs so. Due to often remaining indisposed, he undertakes long journey only after taking advice of the doctor. He has denied that he has not intended to return to India. It has also been stated by him that he has executed power of attorney in favour of his brother. The defendant further submits that as he was in need of money, he settled to sale his house to Ram Sakhi Devi wife of Dina Nath Gupta for Rs. 16,00,000/- as the consideration money and after making payment of Rs. 2,00,000/- as advance money the deed of Bai-Beyana was prepared between the parties. Later on



the said purchaser paid Rs. 14,00,000/- out of the total Rs. 16,00,000/- of the consideration money to the defendant through the demand draft from time to time. The defendant gave possession of land to the purchaser through his brother Agnidhar Prasad on 15.07.2014 and the purchaser is in possession of the same. The purchaser has been residing within that premises. There are four shops in that premises, out of which the plaintiff is the tenant of one shop. The plaintiff runs her shop of readymade garment known as Lakshmi Garments. The defendant has denied the effect of Bai-Beyana, agreement of sale, executed in favour of the plaintiff. The so-called Bai-Beyana and the signature of defendant on it, is forged one, the defendant has further stated that it is quite wrong to say that the defendant is not ready to sale the said land to the plaintiff and that he has not taken even a single rupees as consideration money. It appears that some litigants have persuaded her to file this suit for some illegal gain. The suit is filed with malicious intention, baseless facts and is harassing. The plaintiff is taking undue advantage of the absence of defendant and his brother. Smt. Ramshaki Devi has filed a complaint case bearing No. 1125C of 2005 which is Kadam Kuan P.S. Case No. 395 of 2005 in connection with this property against Sri Ambika Lal, Smt. Saroj Sinha D/o Sri Ambika Lal, Sandep @ Rajeev and Suraj son of Smt. Saroj. The defendant has denied this fact that he had announced to



sale the land in the year 2000 and the plaintiff contacted him and proposed to pay Rs. 10,00,000/-. The defendant also submitted that the plaintiff has defaulted towards payment of rent and has not been making payment of rent for the same. For this notice has been sent to her, reply for the same was given by her through her Advocate Sri Anand Shankar Sinha. In her reply, dated 23.10.2000, she stated nothing about Bai-Beyana or advance money rather she has stated that she has been earning her livelihood any how out of this business. The defendant has denied the fact of accepting Rs. 5,00,000/- as advance from the plaintiff and sending power of attorney to his brother for executing registered sale deed in favour of plaintiff. It is false to say that possession of the ground floor was given to the plaintiff as partial compliance after accepting Rs.5,00,000/- as advance money on 13.10.2000 rather the defendant has stated about the possession of plaintiff over only one shop which is second from south and 3rd from north and the entire residential portion behind the shop has been stated by the defendant as under physical possession of Ram Sakhi Devi. The defendant has admitted the fact of being ready to sale the disputed land and house to Ram Sakhi Devi and executed Bai-Beyana thereof. In the written statement the defendant has stated the fact of executing a power of attorney to his brother on 07.05.2004.

6. With the written statement counter claim has been



filed on behalf of the defendant. The defendant has made himself plaintiff and the plaintiff of this suit has been made defendant in the counter claim. In his counter claim defendant has stated that he is the owner of the land under Schedule A of the counter claim. The defendant i.e. plaintiff of the counter claim had let out shop no. 2 of his premises to the defendant of counter claim. The detail of which has been given in Schedule A and this very shop is the issue of the counter claim. The defendant of the counter claim had agreed to pay Rs. 1200/- per month in addition to the municipal tax. It is also agreed to enhance 15 % of the rent at the interval of 3 years but the defendant of counter claim has not been making payment of rent and municipal tax since 01.12.1995 even after demand. The plaintiff of the counter claim had asked the defendant of counter claim to deposit the rent in his bank account and keep the receipt but she did not deposit the rent and had been residing without paying it. The defendant of counter claim has not paid the rent of two months, therefore, she had defaulted towards payment of rent and is responsible for getting the shop mentioned in Schedule 1 to be vacated. She is not entitled to reside in the shop and has not paid the enhanced municipal tax. The rate of previous rent paid by her as Rs. 1200/- per month whereas after adding the enhanced rate, it comes to Rs. 1650/- per month. Defendant due of the rent is about Rs. 1,50,000/-, thus, she is responsible for paying the rent of three



years due prior to filing of counter claim and also the present rent. Plaintiff of the counter claim had sent notice on 18.10.2000 through his Advocate, the reply to which was given by her on 23.10.2000 in which she has not denied the fact of non-payment of the rent. In her reply, she has stated that she is a widow and any how is earning livelihood for her family. She has stated about payment of Salami at the time of setting rent but there is no any receipt in respect of it and for that she had requested to settling the rent amicably. The plaintiff of the counter claim had submitted that the allegation of accepting Salami is vague, concocted and false. She has threatened the plaintiff of the counter claim through her reply on false suggestion she is guilty for defaulting in payment of the rent as per Bihar Building (Lease & Rent) Eviction Control Act and fit to be dispossessed from the shop. The defendant of counter claim has filed the present false and fabricated case for specific performance of contract and prepared its document only to prolonged the matter of settlement of rent. The plaintiff of the counter claim has submitted that the allegation of counter claim is within the jurisdiction of the court, the cause of action in respect of counter claim arose before the plaintiff of the counter claim on different dates. The defendant of the counter claim did not pay the rent whenever it was demanded. Firstly, when she filed false reply to the notice on 23.10.2000 and secondly on 03.07.2005 when she neither paid the dues of rent



nor vacated the shop. Thus, the cause of action arose which is under jurisdiction of the court. For the jurisdiction of the court the evaluation of counter claim of the rent of 12 months is Rs. 14,400 and the court fee has already been paid on it. The plaintiff of the counter claim has prayed to pass order for vacating her from the land and property as mentioned in Schedule A and also that the defendant may be given possession over the shop mentioned in counter claim after getting the same vacated through the process of the court. Further he has prayed to pass order for providing cost of the suit for the counter claim and any other relief for which he is entitled to.

7. The plaintiff of this suit has filed reply to the counter claim, filed by the defendant of this suit, and has submitted therein that the counter claim of the defendant is false, harassing and not maintainable. The plaintiff has submitted further that there is no relationship of landlord and tenant in between her and defendant and she has been residing in the suit premises mentioned in Schedule A and has been in physical possession over the LIG Housing Flat No. 4/110 and holding No. 110/606 of the ground floor. The subsequent purchaser Ram Sakhi Devi has implicated the plaintiff and her father and son in false case which is Complaint Case No. 1125 C of 2005 (Kadamkuan P.S. Case No. 395 of 2005) under a conspiracy. The plaintiff has stated further that



written statement filed by the defendant is false, baseless and troublesome and charge brought therein is against the agreement for sale dated 13.10.2000. The plaintiff has stated further that as the defendant was in need of money, so, he executed Bai-Beyana dated 24.06.2004 in favour of Ram Sakhi Devi who was successor purchaser. It is clear from the written statement of defendant that he is dishonest, cunning and greedy person, so he has denied earlier Bai-Beyana dated 13.10.2000 because he settled the price of suit land to the plaintiff as Rs. 10,00,000/- in the year 2000 and had accepted Rs. 5,00,000/- as an advance but as the price enhanced over the passage of time, so he settled the price of suit property with Ram Sakhi Devi at Rs. 16,00,000/-. The effect of accepting Rs. 2,00,000/- by defendant as advance from Ram Sakhi Devi is false and concocted. The plaintiff has pointed that as per written statement of defendant he has accepted money from her time to time in a number installments and therefore, the so-called Bai-Beyana is null and void, the so-called possession of Ram Sakhi Devi by the defendant is not specific performance of deed of agreement rather it is null and void and criminal tress pass. It has been stated by the plaintiff that deed of her Bai-Beyana dated 13.10.2000 is true and valid whereas deed of Bai-Beyana dated 24.06.2004 is false, fabricated and forged. The signature of defendant on the deed of Bai-Beyana dated 13.10.2000 is true and through its deed of Bai-Beyana



the status of plaintiff became as of purchaser from tenant. The defendant has tress passed on the suit property through ostentatious agreement in relation with Ram Sakhi Devi under conspiracy. Handing over so-called possession by the defendant to Ram Sakhi Devi is not a specific performance of deed of agreement rather it is null and void and criminal tress pass. The so-called possession has been deceitfully handed over on 15.07.2004 in order to escape a decree awarded in the case of specific performance of contract as well as criminal liability. It has been stated by the plaintiff that deed of Bai-Beyana dated 13.10.2000 is true, valid whereas Bai-Beyana dated 24.06.2004 is forged, false and fabricated and deceitfully executed ante date. The signature of defendant on deed of Bai-Beyana dated 13.10.2000 is true, through this the status of plaintiff has changed from tenant to purchaser. Return of defendant to India in January, 2005 is not correct, even if defendant returned to India then the said fact has been kept secret and concealed and it is done so, for illegal Bai-Beyana dated 24.06.2004 and to realize more consideration money so that in case of revelation of the fact, the plaintiff do not put pressure to execute registered sale deed in her favour. The plaintiff has refuted notice dated 18.10.2000 and its reply dated 23.10.2000 is false, even if there is any such notice, a reply to it then the same has been prepared falsely and deceitfully. The plaintiff has neither received any such notice



nor she has given any reply. Counter claim in writing filed by the defendant in this suit is not maintainable from legal point of view. It has been stated by the plaintiff about her paying rent and municipal tax to the brother of defendant Agnidhar Prasad earlier to 13.10.2000 and further stated that she cannot be held responsible if Agnidhar Prasad did not hand over the rent to defendant. It has been stated by the plaintiff that the suit instituted for specific performance of contract is based on authentic and valid documents. The plaintiff has prayed to dismiss the counter claim with interest.

8. Ram Sakhi Devi has been made defendant no. 2 and a co-plaintiff of counter claim vide order dated 01.05.2006 passed in this suit. Ram Sakhi Devi has also filed her written statement in this suit. Ram Sakhi Devi in her written statement has stated that this suit is malicious and not maintainable. The plaintiff has got no cause of action to institute this suit. This suit is barred by law of limitation and also due to non-joinder of Bihar State Housing Board. She has also stated that she accepts the written statement of defendant no. 1 who is the vendor of property. She in her written statement further stated that LIG Housing Flat No. 4/A /110 Mohalla Lohiya Nagar, Kankerbagh, Patna was allotted to the defendant no. 1 by the Bihar State Housing Board, Patna through registered deed of agreement dated 29.11.1967 on the basis of part payment of consideration money and payment of installments in respect



thereof and the defendant no. 1 had also received possession of it. The said Board executed the final sale deed in about April, 2005 after receiving payment of entire consideration amount and thereafter, defendant no. 1 became holder of purchaser's title of the said occupied house and land. Later on as the defendant no. 1 was in need of money, so, he agreed to sale the said flat to defendant Ram Sakhi Devi for consideration of Rs. Total 16,00,000/- and executed deed of Bai-Beyana in respect thereof on 24.06.2004 after accepting the advance of Rs. 2,00,000/- and also bequeathed possession of the same to her and since then defendant n. 2 is continuing her occupation on it. Defendant no. 1 executed registered sale deed in favour of defendant Ram Sakhi Devi on 12.08.2005 after obtaining permission to sale it from Bihar State Housing Board through attorney Agnidhar Prasad on receiving entire consideration money. Thereafter, said defendant became sole title holder of the said flat. The defendant lives in flat situated at the back of disputed shop. Plaintiff is one of the tenant in it and she has full information about purchase of flat by defendant no. 2. Defendant no. 1 had approached plaintiff through his brother and attorney for rent. Plaintiff has stopped payment of rent to the defendant no. 1 since December, 2010 itself. Plaintiff did not pay the rent to defendant even after demand of the same and became liable for eviction for failing to pay the rent since August, 2005 itself. Hence, defendant no. 1 is legally bound to



evict the plaintiff tenant after sell of flat to defendant no. 2. Defendant no. 1 lives in England and cannot journey to India due to his ill health. Defendant has claimed so-called Bai-Beyana false, fabricated, forged and ante dated. Defendant also claimed the fact to be false that plaintiff even had held any negotiations with defendant no. 1 to purchase the said disputed house. The story of Bai-Beyana is false and fabricated to avoid eviction. Plaintiff has not given any money to defendant no. 1. Defendant no. 1 has claimed in his written statement that Rs. 73,420/- of rent as arrear, she was served notice by defendant no. 1, she gave reply to it on 23.10.2000. She has said nothing about Bai-Beyana even in her said reply. Defendant also stated that the claim of plaintiff that she had given amount of Rs. 5,00,000/- on 13.10.2000 is totally false, whereas in her reply dated 23.10.2000 she has stated that her pecuniary condition is not good, it has also been stated by the defendant that plaintiff with dishonest intention prepared the forged document and she has not filed original document of said so-called Bai-Beyana as yet.

9. Entire written statement and counter claim of defendant no. 1 has been adopted by defendant no. 2. The defendant no. 2 died during pendency of the suit and her husband Shri Dinananth Gupta. and her four sons Umesh Prasad, Mahesh Prasad, Ramesh Prasad and Durgesh Prasad have been substituted at her place as parties who are the



defendants no. 2 to 2D respectively. The written statement of Ram Sakhi Devi and written statement as well as counter claim filed on behalf of defendant no. 1 had been adopted also by aforesaid persons and they have stated that the suit in respect of defendant no. 1 executing deed of Bai-Beyana in favour of plaintiff is false one, they have stated that the written statement and counter claim of defendant no. 1 to be true.

10. On the basis of statement made on behalf of both the parties, in this suit the following issues were framed for consideration:

- (1) Is the suit as framed maintainable ?
- (2) Has the plaintiff sufficient cause of action for instituting the suit ?
- (3) Is the suit barred by law of limitation, waiver, acquiescence and law of estoppel ?
- (4) Whether the deed of Bai-Beyana dated 13.10.2000 which was kept in safe custody is forged, false and fabricated one ?
- (5) Whether the Bai-Beyana dated 13.10.2000 is a forged, false and fabricated document ?
- (6) In specific performance of contract of agreement dated 13.10.2000 in part whether the defendant no. 1 had given possession of ground floor of suit premises to the plaintiff ?
- (7) Whether the deed of Bai-Beyana executed by

defendant no. 1 in favour of defendant no. 2 on 24.06.2004 is valid and true ?

(8) Whether the sale deed executed by defendant no. 1 in favour of defendant no. 2 is valid and legal and whether the same is hit by lis pendence ?

(9) Whether the plaintiff is entitled to receive decree in respect of specific performance of contract ?

(10) Whether the claim as made out in counter claim by plaintiff/defendant is maintainable and whether the plaintiff and defendant of counter claim is liable for eviction from the suit shop ?

(11) Whether the plaintiff is entitled for any other relief or reliefs ?

(12) Whether an agreement was executed between plaintiff and defendant no. 1 on 13.10.2000 ?

11. Learned Sub-Judge took up issues no. 4, 5, 6, 9 and 12 together and decided against the plaintiff and in favour of defendant. Issue no. 2 was also decided against the plaintiff. Issue no. 1 and 3 were not pressed. Issue no. 7 and 8 were also decided against the plaintiff. Issue no. 11 was also decided against the plaintiff. Issue no. 10 was also decided against the plaintiff and in favour of defendant. Accordingly, the suit of the plaintiff was dismissed on contest and counter claim was decreed on contest. The plaintiff was directed to vacate the shop within one month from the date of judgment and give



delivery of possession to the defendant and also to pay arrear amount of rent at the rate of Rs. 1200/- per month from 12.08.2005 till the date of eviction from the shop, failing which the defendant were given liberty to get the shop vacated through the process of the court and realize the arrear of rent. It is directed that both the parties shall bear the respective cost of their suit.

12. The plaintiff being aggrieved and dissatisfied with the judgment and decree has preferred this appeal on the ground that the judgment and decree of the court below is not in accordance with law as well as is bad on facts and, as such, it is fit to be set aside. The learned court below failed to consider the provisions of Contract Act and Specific Relief Act. The learned court below has failed to consider that negotiation of sale and purchase between the plaintiff and defendant became final but the same was not registered due to permission for sale from the Bihar State Housing Board in favour of said defendant was not obtained. Learned court below has failed to consider that an agreement of sale with the vendor on payment of Rs. 5,00,000/- as advance out of total consideration money of Rs. 10,00,000/- was executed on promise of the vender to send power of attorney in the name of his brother for the purpose of final registration after taking permission for sale of the suit property. The learned court below did not consider that after execution of an agreement for



sale dated 13.10.2000 the plaintiff came in possession of the house in part performance of the contract. Learned court below failed to consider that attorney holder promise to execute registered sale deed after obtaining permission to sale from Bihar State Housing Board but for wrongful and illegal gain negotiated to sale the suit property on higher price and executed sale deed in favour of Ram Sakhi Devi and, as such, that is fit to be set aside. The learned court below has failed to consider that the plaintiff has been always ready and willing to perform her part of contract for getting the sale deed of the suit land on payment of balance amount of Rs. 5,00,000/-. The learned court below erred in law not to setting-up any inquiry in respect of the change of original agreement of sale dated 13.10.2000 and Photostat copy thereof which were replaced by two forged documents. Learned court below failed to notice that the original agreement to sale dated 13.10.2000 and Photostat copy filed at the time of filing of the suit were replaced after keeping the same in sealed cover under the signature of lawyer of the defendant in collusion and conspiracy with the court staff but the trial court did not take any action regarding opposing the prayer of plaintiff/appellant for getting the replaced Bai-Beyana by expert from the admitted signature on the record, the trial court ordered for expert examination which was confirmed by this Court also. Plaintiff/appellant got replaced Bai-beyana examined by the



expert who was examined as PW but the subsequent purchaser defendant even did cross-examine the expert nor they closed to get the replaced Bai-beyana examined by the expert and as such trial court should have taken adverse interference against the defendant respondents and would have decreed the suit by holding that Bai-beyana was genuine. The defendant filed petition without serving the copy to the plaintiff for keeping the original and Photostat copy of Bai-beyana in safe custody which was allowed hurriedly and in absence of the plaintiff, the same was kept in safe custody and at that time the same were changed. There was no reason as to why the Photostat copy would have been ordered to be kept in safe custody. The learned court below failed to consider that the file containing other Photostat copy and other documents of the plaintiff was lost and in this regard Sanha was lodged in Kankarbagh Police Station. The learned court below erred in law in not considering the evidence of PW 2, PW 3, PW 4, PW 6, PW 7 and after adopting wrong method discredit the evidence of the plaintiff. The learned court below has wrongly dismissed the suit of the plaintiff and decreed the counter claim of the defendant. The learned court below has failed to consider that subsequent sale deed dated 12.08.2008 executed by the defendant no. 1 is illegal and ineffective under the Specific Relief Act and, as such, the judgment and decree is fit to be set aside. The learned court below erred in law that the



defendant no. 2 purchased the suit house during the pendency of the suit and, as such, she is not the bonafide purchaser and not entitled to get rent from the plaintiff and, as such, finding regarding purchaser is entitled to rent is illegal and fit to be set aside. The defendant no. 1 after filing written statement and making counter claim abandoned the case and did not contest the suit and, as such, plaintiff/appellant case must have been decreed. Contest by late Ram Sakhi Devi and after her by her heirs has no legal right as she was subsequent purchaser with notice during the pendency of the suit. The defendant no. 1 even did not appear in the witness box to stand the test of cross-examination and as such adverse inference should have been drawn against him and the title suit should have been decreed and counter claim dismissed. The attorney did not appear as a witness to contest the suit. Eviction decree passed, as per counter claim, is illegal and bad. Finding of the court below that there was no agreement between the parties on 13.10.2000 for sale of the suit property is illegal and without considering the evidence of PW 5 and, as such, it is fit to be set aside. The finding recorded by the learned court below is against the evidence on record which has been misinterpreted and misconstrued in favour of the defendant.

13. Learned counsel for the appellant has relied upon decision in the case of **Janki Vashdeo Bhojwani & Another ..Appellants Versus Indusind Bank Ltd. & Others...**



Respondents, Reported in (2005) 2 Supreme Court Cases page 217 (paragraphs 11, 12 and 13) and it has been argued that the defendant no. 1 did not appear and came in witness box for being examined and cross-examined and his power of attorney did not dissolve the responsibility of respondent no. 1. Defendant no. 1 should have entered the box and discharge the burden, instead he did not appear in the witness box and allowed his subsequent power of attorney holder to be examined and cross-examined. Deposing in a witness box and being cross-examined is a personal act and cannot be done through an agent/power of attorney holder. Further reliance has been placed upon a judgment in the case of **Vidhyadhar ..Appellant Versus Manikrao and Another ..Respondents** reported in **(1999) 3 Supreme Court Cases page 573** (para 17) and it has been argued that neither Dr. Sarangdhar Prasad nor his power of attorney holder Agnidhar Prasad appeared in the witness box. Agnidhar Prasad has filed written statement and counter claim but did not appear in the witness box. Dr. Sarangdhar Prasad was present in India and has executed an affidavit at that time but did not choose to appear in the witness box. Where the party to the suit does not appear in the witness box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct as has been held in series of decisions passed by various High Courts

and by Privy Council. The Apex court citing those decisions of different High Courts and Privy Council, has held that a presumption under Section 114 of the Evidence Act would arise against a party who did not enter into the witness box.

14. On the other hand, on behalf of the respondents, it has been submitted that the suit of the plaintiff was rightly dismissed as the plaintiff had failed to prove that Dr. Sarangdhar Prasad had executed a deed of agreement to sale in favour of the plaintiff on 13.10.2000 and further that the defendant no. 1 had given possession of ground floor of suit premises to the plaintiff in part performance of the contract as the original deed of agreement to sale dated 13.10.2000 and its Photostat copy were forged and fabricated document, which, by order dated 18.07.2006, was kept in sealed envelope and on that date both parties have filed their attendance, thereafter, on 07.09.2006 a petition was filed by plaintiff that the documents have been changed though the plaintiff has not verified the documents kept under sealed envelope and this goes to show malafide intention of the plaintiff that she was knowing that agreement to sale, dated 13.10.2000, fled by her, is forged and fabricated document and not executed by Dr. Sarangdhar Prasad. Thereafter, against that petition rejoinder was filed on 14.09.2006 and on 18.09.2006 the plaintiff filed petition for inspection. Against that also rejoinder was filed on behalf of defendant on



19.10.2006. On 01.11.2006 the documents were inspected and on 3.11.2006 petition was filed to keep on record for further use and reference and thereafter, plaintiff filed petition for issuance of summons to witness and waived the right for inquiry. Dr. Sarangdhar Prasad has executed power of attorney, dated 16.06.2006, in favour of Umesh Prasad, one of the son of Ram Sakhi Devi, and he has deposed as owner and power or attorney holder. He was substituted as one of the defendant also. So, in the present case the two rulings cited on behalf of appellant are not applicable. It is admitted that plaintiff is tenant in the suit premises in one of the shop. Payment was made till 2000 and as per the case of the plaintiff herself that thereafter, no rent was paid, as admitted by the plaintiff herself, because she claimed that after execution of deed of agreement to sale the relationship of landlord and tenant extinguished and the plaintiff came in possession over the ground floor of the suit house. Agreement to sale, as per the plaintiff, was dated 13.10.2000 but the suit was filed on 28.10.2004 beyond three years and, as such, the suit is barred by law of limitation. The plaintiff has maneuvered, manipulated and concocted the story that the entire file containing Photostat copy of agreement to sale dated 13.10.2000 and other documents were lost and for that Sanha was lodged. As a matter of fact Sanha was lodged with ulterior purpose giving colour to the suit. The learned counsel for the



respondent has relied upon a decision in the case of **Sushil Kumar ... Appellant vs. Rakesh Kumar ... Respondent** reported in **2004 (1) PLJR (Supreme Court) 261** (paragraph 69, 71, 72) and has argued that under Section 58 of the Indian Evidence Act the fact admitted need not be proved. Further reliance has been placed on a judgment in the case of **Standard Chartered Bank ..Appellant Versus Anadhra Bank Financial Services Ltd. and Others.. Respondents** reported in **(2016) 1 Supreme Court Cases page 207** (paragraph 31) and has argued that it is settled position of law that if an allegation made in the plaint, if not specifically denied in the written statement, it is treated as admitted. Here, also the plaintiff has not denied that he has not paid rent after 13.10.2000. Further reliance has been placed upon a judgment in the case of **Nagindas Ramdas,Appellant v. Dalpatram Iccharam @ Brijram and others. Respondents** reported in **AIR 1974 Supreme Court page 471** (paragraph 26) and it has been argued that admissions in pleadings for judicial admissions, admissible under Section 58 of the Evidence Act, made by the parties or their agents at or before hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitutes waiver of proof. Learned counsel for the respondents has further argued that as alleged by the plaintiff her agreement to sale is dated 13.10.2000 and



suit has been filed on 28.10.2004 after three years and as such the suit is barred by law of limitation also. Basis of the suit is not on the record. Agreement to sale dated 13.10.2000 as alleged has been changed but no prayer has been made to initiate the inquiry. Subsequent happening did not brought on record by amendment of pleadings and the court cannot travel beyond the pleadings as no party can lead the evidence on an issue/point not raised in the pleadings and in case such evidence has been adduced or a finding of fact has been recorded by the court, it is just to be ignored. Though it may be different case wherein in spite of specific pleadings a particular issue is not framed and parties having full knowledge of the issue in controversy lead the evidence and the court records a finding on it. The learned counsel has relied upon a judgment rendered in the case of **Union of India .. Appellant vs. Ibrahim Uddin & Anr.. Respondents** reported in **2013 (1) PLJR page 48 SC** (para 69 vii). During the pendency of the suit Ram Sakhi Devi died and Umesh Prasad was substituted and he became the owner thereof. He was also having power of attorney dated 16.06.2006, executed by Dr. Sarangdhar Prasad. Umesh Prasad deposed in the court as power of attorney holder and also as owner thereof. So, non-examination of Dr. Sarangdhar Prasad or Sri Agnidhar Prasad is not fatal for the respondents. It was for the plaintiff to prove the agreement to sale alleged to be executed by Dr.



Sarangdhar Prasad but the plaintiff has failed to prove the document to be true and, as such, the learned trial court has rightly dismissed the suit of the plaintiff. The learned counsel for the respondents has placed reliance upon a judgment rendered in the case of **Thiruvengada Pillai v. Navaneethammal & Anr.** reported in **AIR 2008 Supreme Court page 1541** (para 17). Due to non-examination of Dr. Sarangdhar Prasad or Sri Agnidhar Prasad no adverse inference can be drawn against the defendants because Umesh Prasad has deposed as owner and power of attorney holder. The principle behind drawing of adverse inference is largely based upon "best evidence theory" which postulates that a court can draw adverse inference against a party who with holds the best evidence in his possession. The question of drawing an adverse inference against a party would arise only when there is no evidence on the record. Here, on the record, there is evidence of Umesh Prasad and as such question of drawing adverse inference cannot arise. It has further been argued that the suit of the plaintiff was rightly dismissed and counter claim of the defendant has rightly been decreed. There is no illegality, incorrectness or impropriety. No interference is required by this Court and the judgment and decree passed by the learned trial judge is fit to be affirmed.

15. On the basis of rival contentions of the parties

the points involved in this appeal are as follows:

i. Whether Dr. Sarangdhar Prasad has executed agreement to sale dated 13.10.2000 in favour of the plaintiff/appellant and whether the same was changed at the time of keeping under the safe custody?

ii. Whether the agreement to sale dated 13.10.2000 is forged, false and fabricated document and whether the defendant no. 1 had given possession of ground floor of suit premises to the plaintiff in part performance of the agreement ?

iii. Whether the agreement to sale executed by defendant no. 1 in favour of defendant no. 1 on 24.06.2004 is valid and true and whether the sale deed executed accordingly by defendant no. 1 in favour of defendant no. 2 is right, valid and legal or hit by lis pendense.

iv. Whether the plaintiff is entitled for decree of specific performance of contract ?

v. Whether the claim as made out in counter claim by the defendant is fit to be allowed ?

vi. Whether the suit was rightly dismissed and counter claim was rightly allowed ?

16. On behalf of plaintiff, 9 witnesses have been



examined. They are: Shiv Nandan Prasad PW 1, Rajeev Kumar PW 2, Manoj Kumar PW 3, Sanjay Sinha PW 4, Akhtar Nehal PW 5, Suraj Kumar PW 6, Smt. Saroj Sinha PW 7, Sri Kant Prasad PW 8 and Shri Keshav Prasad PW 9. By way of documentary evidences the following documents have been exhibited.

17. Ext. 1 to 1/A are receipts of purchased goods, Ext. 2 is report dated 08.02.2009 of hand writing expert, Ext. 2/A is forwarding letter of report of hand writing expert, Ext. 3 to 3/10 are negatives of photographs, Ext. 4 to 4/10 are photographs, Ext. 5 is judgment dated 31.07.2008 of Shri Deepak Kumar, Judicial Magistrate and Ext. 6 is decision dated 12.08.2008 of Shri Sanjay Kumar, Judicial Magistrate.

18. On behalf of defendants also 9 witnesses have been examined. They are: Rakesh Singh DW 1, Ranjan Kumar Singh DW 2 SanjayKumar Singh DW 3, Anil Kumar Singh DW 4, Sunil Kumar Dubey DW 5, Shiv Shankar Gupta DW 6, Parmanand Singh DW 7, Uma Prasad DW 8 and Umesh Prasad DW 9. Besides oral evidence, documentary evidences have also been adduced on behalf of defendants. Ext. A is deed dated 12.08.2005, Ext. B is agreement to sale dated 24.06.2004 executed in favour of Ram Sakhi Devi, Ext. C is certificate dated 15.07.2004 in respect of delivery of possession by defendant no. 1, Ext. D to D/3 tax receipts, Ext. E notice dated

12.10.2000 sent to plaintiff on behalf of defendant no. 1, Ext. E /1 reply to notice, Ext. F power of attorney dated 16.06.2006, Ext. G is copy of deed executed by defendant no. 1 in favour of plaintiff and Ext. H is affidavit of defendant no. 1.

19. Point No. 1- The case of the plaintiff is that when Dr. Sarangdhar Prasad had last visited India in the month of October, 2000, then he had declared to sale the suit property, thereafter, plaintiff approached him for purchasing it and proposed to pay Rs. 10,00,000/- as consideration money for it as no other was ready to pay the said consideration money, hence, the sale of it was settled with the plaintiff, but as the said suit property has not been transferred by the Bihar State Housing Board in favour of defendant no. 1 by that time, so, it was not possible to register the sale deed in favour of plaintiff and defendant had to stay in India for a limited period of time, during which such time transfer was not possible, therefore, after accepting Rs. 5,00,000/- from plaintiff as advance money, Dr. Sarangdhar Prasad executed the deed of agreement to sale in favour of the plaintiff and promised that after returning to United Kingdom he would sent power of attorney in faovur of his brother Sri Agnidhar Prasad to get the land from Bihar State Housing Board registered in his name and obtain permission to sale it to the plaintiff and to get the sale deed registered in favour of the plaintiff after receiving the



balance consideration amount. Defendant executed deed of Bai-beyana on 13.10.2000 after accepting advance money of Rs. 5,00,000/- from plaintiff and in specific compliance of agreement delivered possession of ground floor of the house to the plaintiff. But, as Dr. Sarangdhar Prasad has sent power of attorney to his brother Sri Agnidhar Prasad from U. K., so, the plaintiff has instituted the suit against the defendant through Sri Agnidhar Prasad. The plaintiff reminded Sri Agnidhar Prasad to execute the sale deed in favour of the plaintiff, thereafter, the plaintiff came to know that Sri Agnidhar Prasad is negotiating to sale the suit property at higher price for his wrongful and illegal benefit.

20. On the other hand defendant is denying the aforesaid facts and stated that there are four shops situated in front of the suit property premises, out of which, plaintiff is a tenant of one shop and runs shop of readymade garment in it by the name of Laxmi Garments, Rs. 5,00,000/- was never paid by plaintiff as advance money nor any deed of agreement to sale was executed in her favour. The so called deed of Bai-beyana and the signature of defendant thereon is forged and fabricated one. The plaintiff is not paying the rent due to which she was served with a notice, she sent a reply to the notice through, an Advocate in which she has not even referred/averred, in respect of agreement to sale. PW 1 Rajeev



Kumar has stated in his examination in chief that the disputed premises which belongs to Dr. Sarangdhar Prasad earlier and the same was finalized for a payment of Rs. 10,00,000/- with his mother. Dr. Sarangdhar Prasad finalized the sale of aforesaid suit premises for amount of Rs. 10,00,000/- and on the same day i.e. on 13.10.2000 he executed the agreement to sale of the suit premises in favour of his mother to receive the amount of Rs. 5,00,000/- as an advance. He has stated in paragraph 36 in his cross-examination that amount of Rs. 5,00,000/- was not paid to him by either withdrawing from bank or from post office. The amount of money was available with him and his mother. He does not remember as to what amount of rupees he had. He had money out of the income of his shop, selling of land and retiral amount of his maternal grandfather. He does not remember as to what amount the three items separately had. He has stated at paragraph 37 that he does not remember as to when he had sold the land. He does not remember as to how much earlier he had sold the land prior to lending him the amount. He cannot explain the details of the sale of his land. In paragraph 38 he has stated that his maternal grandfather was on the post of Work Sarkar in PWD. He had not given cheque for the money. In paragraph 40 that he cannot say that the agreement of sale which is filed in the court is forged. He has come to know that paper of agreement to sale has been changed. PW 3 Manoj Kumar has



stated in examination in chief regarding payment of advance money of Rs. 5,00,000/- and execution of deed of agreement to sale dated 13.10.2000 and that at the instruction of Dr. Sarangdhar Prasad he, Sanjit Kumar and Subodh Kumar put their signature as witness thereof. It came to knowledge from the plaintiff that the defendants have changed the original agreement to sale and its Photostat copy. In paragraph 27 of his cross-examination he states that he worked in shop of Saroj Sinha. He worked in her shop from 1990 to 2004. In paragraph 30 he has stated that Saroj Sinha told him that the paper of the Bai-beyana has been changed 3-4 months ago. He did not ask her as to how the Bai-beyana was changed. She told that the paper of Bai-beyana was changed in the court where it was filed. PW 4 Sanjay Sinha has also stated similarly regarding execution of agreement to sale in favour of plaintiff by Dr. Sarangdhar Prasad and Dr. Sarangdhar Prasad received the amount of Rs. 5,00,000/-. Manoj Kumar Sinha and he also put their signature thereon as witness. He came to knowledge from plaintiff that defendants have changed the original paper of Bai-beyana and its zerox copy. In paragraph 17 of his cross-examination he has stated that this deed of Bai-beyana is changed one and it does not bear his signature. It is a forged one and this is the zerox copy of that very changed paper of Bai-beyana. PW 6 Saroj Kumar, the son of the plaintiff has stated in his examination-in-chief that Dr. Sarangdhar Prasad



used to purchase trousers and shirts and other cotton clothes for himself and for the members of his family from his shop on coming to India and used to make bills of purchased items and the amount was adjusted with rent of the shops. This Bill is of 20.09.2000 by which Dr. Sarangdhar Prasad had purchased the clothes, it is in his pen and his signature and it has been marked as Ext. 1 with objection. He has further stated that this is the Bill of 12.10.2000 which bears the rate mentioned in Hindi in the pen of his mother and the word 'T-Shirt' in English thereon is in the pen of his brother Sandeep and less Rs. 3780.50/- below is in English in the pen of Dr. Sarangdhar Prasad which he identified. In paragraph 30 of his cross-examination he has stated that he does not possess any evidence of giving the amount of Rs. 5,00,000/-. PW 7 is the plaintiff Smt. Saroj Sinha herself. She has stated in her examination-in-chief that Dr. Sarangdhar Prasad is the previous owner of the suit property, Sri Agnidhar Prasad is his brother and representative of Dr. Sarangdhar Prasad was allotted the suit property by Bihar State Housing Board. I am a tenant of one of the four shops existed in the suit property of defendant no. 1. The defendant no. 1 Dr. Sarangdhar Prasad is also settled in England and has acquired the citizenship of that country. He used to visit India after few years now and then. When he came to Patna in India in the month of September,- October in the year 2000 he declared publicly to sale this suit



property. Dr. Sarangdhar Prasad used to buy readymade garments such as trousers and Kurta from her shop when he came to Patna. In the year 2000 he had purchased 8 sets of trousers and Kurta costing Rs. 1600/- from her shop and used to pay them on credit whenever he purchased, he used to make the receipt in his own pen. The said purchased amount was adjusted with the rent. After adjusting the prices of the clothes with the rent, if excess amount came out, he used to pay it off by cash and retain the slip and tore off. If certain amount on her part remains to be paid off after adjusting the rent with the amount of the purchased times, she used to pay it off to him by cash. Dr. Sarangdhar Prasad did not ever give any receipt for the rent received. He used to say on demand of the rent receipt that she should leave the shop if she did not have faith, therefore, she left the demand of rent receipt. She decided to purchase the suit property on declaration of the sale of the suit property since her shop is the part of the suit property and she has to engage her son in business therein. She has further stated that she went to Dr. Saheb on 12.10.2000 and the matter was negotiated on an amount of Rs. 10,00,000/-. Dr. Saheb demanded cash of Rs. 5,00,000/- as an advance and called her on 13.10.2000, he told that the paper would be ready then she had to come with the amount. He asked the witnesses to come also. Dr. Saheb had come to the shop in the evening of 12.10.2000 also, he was



accompanied with his brother Agnidhar Prasad, there were other persons also present there besides, the aforesaid witnesses at that time. She with the witnesses went to his house on 13.10.2000. Subodh arrived thereafter, 10 minutes her elder son Rajeev and Sanddep with her. Dr. Saheb kept the paper of Bai-beyana ready, Dr. Saheb read over and explained the contents to her, she handed over the amount of Rs. 5,00,000/- to him then he put his signature thereon and asked to put her signature therein also and all of its pages bear the signature of Dr. Saheb and those of her. The witnesses put their signature on the last page of it. She had filed the original of Bai-beyana and its zerox copy in the court. The present paper of Bai-beyana and zerox copy of the same, which are available before the court, are forged one. The witness states to look at it that the defendant in her absence and absence of the Advocate on her behalf on 28.07.2006 without furnishing any true copy of application/petition in the pretext of getting the document of Bai-beyana kept safe in the envelope and to seek the order of the court and to keep the employees of the court under influence got the forged papers of Bai-beyana and its zerox kept stealthily in the envelope in place of its original paper and Xerox copy. The office copy of the brief of the suit was left in the tempo at the time of returning home on the date of the suit fixed in the court and lost and she has lodged Sanha in that regard in Kankarbagh Police Station and has filed the



zerox copy of the same in the court. She has further stated that the date 13.10.2000 was fixed for execution of Bai-beyana, because the disputed house was not finally registered in the name of Dr. Saheb by Bihar State Housing Board till then. She has further stated that Dr. Saheb had to go back to England and thus, had assured her that his brother Agnidhar Prasad after getting the property registered in his name and seek permission to sale it from Housing Board, would execute the sale deed in her favour after receiving the rest amount of Rs. 5,00,000/- of the consideration money. He would send the power of attorney in favour of Agnidhar Prasad from England for that purpose. She is/was always ready to get the sale deed executed of the disputed premises to be executed in her favour on payment of rest amount of Rs. 5,00,000/- of the consideration money. She has stated in paragraph 63 of her cross-examination that she is not possessed with any documentary proof/evidence of the payment of amount to Dr. Saheb. She had paid off the said money after selling out her land situated at Khagaul. She does not remember as to how much earlier she had sold her land prior to execution of Bai-beyana. She has further stated in paragraph 64 that she has taken a loan of about Rs. 2,00,000/- and amount of Rs. 1,00,000/- out of that she was given by her father. She does not recall as to whom she has taken the amount of Rs. 1,00,000/- from. PW 8 Keshav Prasad is a hand writing and



finger print expert who affirmed his report at Ext. 2 and the forwarding report as Ext. 2/1, with his evidence. He has also stated in his examination in chief that it is found from examination that the signatures and initials of the persons under dispute was different from their original specimen signature and initial and the disputed signature and initial are not of those persons who had put their signature and initial, therefore, the original and disputed signatures and initials have been put by different persons. PW 9 Srikant Prasad has affirmed Ext. 3 to Ext. 3/10 and Ext. 4 to Ext. 4/10 containing the photographs, negatives and enlarged photographs of signatures of Dr. Sarangdhar Prasad and plaintiff Saroj Sinha on the deed of Bai-beyana. The signatures of the witnesses Sanjay Sinha and Manoj Kumar and the signature of Dr. Sarangdhar Prasad on power of attorney, the signature of Saroj Sinha, verification of the plaint, the photographs of the signatures of Sanjay Sinha and Manoj Kumar from Vakalatnama and depositions respectively taken in presence of Advocates of both parties and Siresthedar. Ext. 2 is the report of hand writing and finger print expert which reflects that the signature of defendant Dr. Sarangdhar Prasad on the deed of Bai-beyana does not tally with the signature on power of attorney. The sanha of the information with regard to loss of the file on behalf of the plaintiff has been marked as Ext. X for identification. The papers of Bai-beyana and their zerox copy



available on record are marked as Ext. x/1 and x/2 respectively. DW 7 Parmanand Singh is a formal witness. He has proved the legal notice dated 12.10.2000 sent to the plaintiff. DW 8 Uma Prasad has proved the reply to the legal notice dated 23.10.2000 in his evidence. DW 9 is Umesh Prasad. He has proved material Ext. F containing power of attorney dated 16.06.2006 executed by defendant no. 1 in his evidence. He has proved the lease deed dated 23.11.1994 as Ext. G. which is executed by defendant no. 1 in favour of plaintiff. He has stated in his examination-in-chief that the Bai-beyana by the plaintiff, the matter of selling of suit property for the aforesaid holding by defendant no. 1 and the story of the execution of deed of Bai-beyana is utterly false, forged, fabricated and antedated. The deal of purchase by plaintiff with defendant no. 1 is utterly false and fabricated. This suit has been filed merely with an intention to not to vacate the shop of suit property. The plaintiff did not pay any kind of amount ever to defendant no. 1 and amount of Rs. 73042/- is due as rent to the plaintiff. For this defendant no. 1 has served the legal notice to the plaintiff and the same is marked as Ext. E. The plaintiff has sent reply of the same on 23.10.2000 and the same is marked as Ext. E/1. He has further stated that the execution of Bai-beyana dated 13.10.2000 by the defendant in favour of plaintiff is utterly false, forged and fabricated as the defendant no. 1 has not put his signature thereon. But plaintiff



has made the forged signature thereof. Thus, after careful consideration and close scrutiny of the evidences available on the record, it is proved that the paper of Bai-beyana dated 13.10.2000 available on record is forged and fabricated. It is not proved from the oral and documentary evidences produced on behalf of the plaintiff that defendant no. 1 has given possession of the ground floor of the suit premises to the plaintiff in part compliance of the agreement. So far as question of decree of specific performance of contract is concerned, there is no any substantial evidence of payment of amount of Rs. 5,00,000/- as advance of Bai-beyana because Bai-beyana dated 13.10.2000 itself is not proved. Under the prevailing circumstances, the question of awarding decree of specific performance of contract is meaningless, the plaintiff has failed to prove the execution of agreement dated 13.10.2000 between the plaintiff and defendant no. 1. According to the plaintiff, the signature of defendant no. 1 Dr. Sarangdhar Prasad on the document of agreement was changed by the defendant in the court, the plaintiff did not file even its zerox copy rather she stated that the office brief file of the suit was left in the tempo in course of her returning home from the court. No inquiry was made regarding the changing of the document and the plaintiff did not take any step in this regard and waived her right of inquiry. It is denied on behalf of Dr. Sarangdhar Prasad that the execution of any



agreement on 13.10.2000 with the plaintiff is made, there is no any substantial evidence of lending an amount of Rs. 5,00,000/- as an advance to Dr. Sarangdhar Prasad at the time of execution of agreement. Non-examination of Dr. Sarangdhar Prasad and Agnidhar Prasad in the court is not fatal for the case of the defendant as Umesh Prasad has been examined who has got power of attorney executed by Dr. Sarangdhar Prasad in his favour and further after the death of Ram Sakhi Devi he has been substituted as legal heir in the suit as one of the defendant and that Umesh Prasad has been examined. The rulings relied upon by learned counsel for the appellant is not applicable in the present case. Here, the facts of the case is quite on different footing than that of the case. The plaintiff has miserably failed in proving that Dr. Sarangdhar Prasad had executed agreement to sale dated 13.10.2000 in favour of the plaintiff after accepting Rs. 5,00,000/- as an advance money and further the plaintiff has failed to prove that the original deed of agreement to sale and its photocopy were changed in the court at the time when the same were kept in safe custody. Thus, this point is decided against the appellant and in favour of the respondent.

21. Point No. ii:- As has already been discussed above, deed of agreement to sale dated 13.10.2000, available on record, is a forged and fabricated document and the plaintiff



has failed to prove that she was given possession of the ground floor of the suit premises in part performance of the contract. There is no reliable evidence on record to show that the plaintiff was put in possession over the ground floor of the suit premises in part performance of the contract on the basis of agreement to sale dated 13.10.2000. On the other hand, from the evidence of defendants, it is proved that the plaintiff is in possession over only one of the shop where she runs a garment shop. Thus, this point is also decided against the appellant and in favour of the respondents.

22. Point No. (iii):- The defendant no. 1 in his written statement has clearly admitted that the deal for selling the disputed land was settled with defendant no. 2 Ram Sakhi Devi for Rs. 16,00,000/- on 24.06.2004 and Sri Agnidhar Prasad, the power of attorney holder of Dr. Sarangdhar Prasad, prepared the deed of Bai-beyana after accepting Rs. 2,00,000/- in addition to it Ext. A is the registered sale deed executed by the power of attorney holder Sri Agnidhar Prasad on 12.08.2005 about which the defendant no. 1 has admitted in his written statement that the suit land has been sold to Ram Sakhi Devi. On perusal of Ext. C it transpires that the power of attorney holder Sri Agnidhar Prasad had given certificate regarding the delivery of possession on the said suit land to Ram Sakhi Devi. In paragraph 3 of his statement also



defendant no. 3 Rakesh Singh has stated that out of four shops, plaintiff Saroj Sinha runs one shop named as Lakshmi Garments and other two shopkeepers namely Photo and Lalita Medico had vacated the shop and gave possession to Ram Sakhi Devi, presently the shops are vacant and under possession of sons of Ram Sakhi Devi after her death. In paragraph 4 of his evidence he has stated that he has been residing with his family on the northern floor of the disputed house on rent since August, 2004 itself and has been paying rent to Mahesh the son of Ram Sakhi Devi. DW 2 Ranjan Kumar Singh and DW 3 Sanjay Kumar Singh have also confirmed the possession of Ram Sakhi Devi. Thus, it transpires that Ram Sakhi Devi is in the possession of the house under suit. DW 4 Anil Kumar Singh and DW 5 Sunil Kumar Dubey are the formal witness and they also confirmed the fact of putting signature on the sale deed and Bai-beyana by Sri Agnidhar Prasad in their presence. Thus, it is clear that Bai-beyana dated 24.06.2004 and registered sale deed executed in favour of defendant no. 2 is valid and genuine. So far as its effect on suit is concerned, it would have been effective when the plaintiff would have proved the Bai-beyana and her suit, but she failed to prove the same. Thus, the plaintiff has failed to substantiate her case. The sale deed of defendant no. 2 is valid, legal and effective documents and it is not hit by lis pendence because the suit filed by plaintiff is

without any basis and she has got no cause of action to bring this suit. The onus to prove lies on the plaintiff but she failed to do so in the present case. Thus, this point is also decided against the appellant and in favour of the respondents.

23. Point no. (iv) :- As has already been discussed above, the plaintiff has not been able to prove her case and as such, she is not entitled for decree for specific performance of contract against the defendant no. 1. The plaintiff has miserably failed to prove that any agreement was executed between defendant no. 1 and plaintiff and the plaintiff has paid Rs. 5,00,000/- as an advance money to the defendant no. 1. The rulings relied upon by learned counsel for the respondents is fully applicable in the present case whereas the rulings relied upon by the learned counsel for the appellant are not applicable in the facts and circumstances of the present case. Thus, this point is also decided in favour of the respondents and against the appellant.

24. Point no. (v) :- The written statement together with counter claim has been filed by the power of attorney holder Sri Agnidhar Prasad who is the brother of defendant no. 1 Dr. Sarangdhar Prasad and the requisite court fee of that counter claim has also been deposited by him. It has been stated in the counter claim that the defendant of counter claim i.e. plaintiff of the suit had not been paying rent and municipal



tax since 01.12.1995 in spite of repeated demand. She had taken the said shop mentioned in schedule A on Rs. 1200/- monthly rent with the municipal tax on it. It had been settled to enhance 15 per cent of the rent after every three years. The plaintiff of the counter claim lives in England and his attorney and brother Sri Agnidhar Prasad demanded the rent from the plaintiff of the suit. The plaintiff of the counter claim had told the defendant of the counter claim to deposit the rent with his bank account and keep the receipt with her but she did not do so and she has been living there without paying rent. She does not pay the enhanced rate and municipal tax. The plaintiff of the counter claim has submitted that as per the Bihar Building Control Act the defendant of the counter claim i.e. the plaintiff of the suit has defaulted in payment of rent and on this ground she is fit to be evicted from the shop. It has been stated in reply filed by the defendant of the counter claim that prior to 13.10.2000 she had paid the rent and municipal tax hand to hand to Sri Agnidhar Prasad, the brother of defendant and when plaintiff of counter claim i.e. the defendant of this case executed the deed of Bai-beyana on 13.10.2000 after accepting Rs. 5,00,000/- from the plaintiff and gave delivery of possession in her favour, in that case she became purchaser not a tenant. This statement of plaintiff has been refuted by the defendant Dr. Agnidhar Prasad, Ext.H is his affidavit in which he has clearly denied the fact of executing any Bai-



beyana and has stated that the said deed of Bai-beyana is forged. The plaintiff has failed to prove the Bai-beyana dated 13.10.2000. In this regard, the plaintiff has stated deed of Bai-beyana available on record has been changed by the defendant in the court itself. The plaintiff has not filed its another photocopy. In this regard, she has stated that file of suit was left in tempo itself. Thus, non-proving of the deed of Bai-beyana limits the plaintiff to the status of tenant only. Moreover, no change can be brought in status of a person until and unless the title is transferred. Even as per the statement of plaintiff with regard to payment of rent, she has not paid rent after 13.10.2000. Ext. E is pleader's notice on behalf of Dr. Sarangdhar Prasad and Agnidhar Prasad sent to the plaintiff Saroj Sinha on 12.10.2000 which is in respect of payment of arrear of rent amount. Ext. E/1 is reply to pleader's notice on behalf of plaintiff Saroj Sinha, but it has been denied on behalf of plaintiff that she has received any such notice and given any such reply thereof. As per the facts, mentioned in the written statement and counter claim filed on behalf of defendant Dr. Sarangdhar Prasad, the suit property has been Sold to Ram Sakhi Devi for sum of Rs. 16,00,000/- and she has also been put in occupation and possession thereof. Ext. A is the registered sale deed executed in favour of Ram Sakhi Devi and Ext. C is the certificate by which Ram Sakhi Devi has been put in possession of suit property. After becoming a party, in this



suit, Ram Sakhi Devi has adopted the written statement and counter claim filed on behalf of Dr. Sarangdhar Prasad. After the death of Ram Sakhi Devi, her sons who have become party of the suit have also adopted the said written statement and counter claim. As per counter claim, the rent due with the plaintiff since 01.12.1995. This counter claim has been filed on 18.07.2005. Sri Agnidhar Prasad power of attorney holder on behalf of Dr. Sarangdhar Prasad has executed sale deed in favour of Ram Sakhi Devi on 12.08.2005. Dr. Sarangdhar Prasad has not himself given his evidence in the suit, he has also executed power of attorney in favour of defendant Umesh Prasad. Ext. F which is in respect of contesting with Kishori Singh, his sons and suit No. 427 of 2004. It has been confessed by the plaintiff that she has paid rent prior to 13.10.2000, thus, the plaintiff has not paid rent thereafter. It is quite obvious that the plaintiff has defaulted towards payment of rent to the defendant for a period of more than two months before filing of the counter claim and on this ground, she is liable to be evicted from the suit property. It is crystal clear that the plaintiff and the defendant of this suit have relationship of tenant and landlord. It is also obvious that the plaintiff has defaulted towards payment of rent for a period of two months and counter claim has been filed on 18.07.2005 and relief has been sought for payment of arrear of rent amount and eviction from the suit property on this ground. The



suit property has been sold to Ram Sakhi Devi on 12.08.2005. It is evident from Ext. G that Rs. 1200/- was fixed as monthly rent, on this ground after the death of Ram Sakhi Devi, her sons who have become defendant in the suit are entitled to realize rent at the rate of 1200/- per month from 12.08.2005 till the date of eviction of the shop. Thus, this point has also been decided in favour of the respondents and against the appellant.

25. Point No. 6:- The learned court below has rightly dismissed the suit and has rightly decreed the counter claim. As has been discussed above, the plaintiff has failed to prove her case as made out in the plaint whereas the defendant has succeeded in proving the case as made out in the counter claim as the plaintiff of this suit has defaulted in paying the rent for more than two months and as such, she is liable to be evicted from one of the shop wherein she is running her garments shop. The plaintiff has admitted herself that after 13.10.2000 she has not paid rent as she has become the owner of the suit property on the basis of deed of agreement to sale. Thus, admittedly, the plaintiff has not paid rent for more than two months of the suit premises to the defendant and she is liable to be evicted and also liable to make payment of arrears of rent. Learned trial judge has rightly dismissed the suit and rightly decreed the counter claim. There is no illegality,

impropriety or incorrectness in the same accordingly, it does not require any interference by this Court. Thus, this point is also decided in favour of the respondents and against the appellant.

26. In the result, this appeal is hereby dismissed on contest but under the circumstances without cost. The parties will bear their own cost respectively.

(Jitendra Mohan Sharma, J)

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