

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.322 of 2013

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Kedar Nath Mahaseth @ Santosh Mahaseth S/O Late Ram Chandra
Mahaseth Resident of Mohalla Bakarganj, P.O. And P.S. Laheriasarai,
District Darbhanga.

.... Appellant/s

Versus

Smt. Janak Lali Devi W/O Sri Pramod Kumar Thakur Resident of Mohalla
G.N. Ganj, P.O. And P.S. Laheriasarai, District Darbhanga.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Jagdish Prasad Bhagat

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

5 10-02-2016

Heard Mr. Sukumar Sinha, learned counsel senior
appearing on behalf of the appellant. Mr. S.S. Dwivedi, learned
senior counsel for the respondent is also present.

The defendant is the appellant in this appeal against
the judgment and decree of affirmance granting the decree to the
plaintiff in the suit for specific performance of contract.

The plaintiff filed the suit for specific performance of
contract directing the defendant to execute and register the sale
deed in respect of the suit land in favour of the plaintiff. The basis
of the claim of the plaintiff was the Mahadnama dated 31.05.2004
(Ext. 2) which was an unregistered document wherein the previous
agreement for sale between the plaintiff and the defendant and the
receipt of the advance money out of the total consideration money

was also acknowledged. The defendant filed a contesting written statement resisting the prayer for grant of the relief as prayed by the plaintiff on the basis of the Mahadnama.

The trial court returned the findings on the issues in favour of the plaintiff and decreed the suit. In appeal by the defendant the appellate court below, on reappraisal of evidence has concurred with the findings of the trial court and dismissed the appeal by the impugned judgment and decree.

Assailing the impugned judgment, Mr. Sinha, the learned senior counsel appearing on behalf of the defendant-appellant has made two fold submissions. Firstly, it has been canvassed that the Mahadnama (Ext. 2) is not admissible in evidence for want of registration in view of the amendment in the year 2001 in the Registration Act introducing Section 17 (1-A). Elaborating the submissions, it has been contended that according to the case of the plaintiff itself, the possession over the suit land was delivered to the plaintiff by the defendant in part performance of the contract on 08.12.1997 when the earlier unregistered Mahadnama was said to have been executed and in this view of the matter, the transaction is covered by the provision of Section 17 (1-A) of the Registration Act. It has thus been argued that in view of these facts the suit for specific performance of contract on



the basis of unregistered Mahadnama could not have been decreed. It has been next submitted that even after accepting that the unregistered Mahadnama would have been admissible in evidence still in view of the aforesaid amended provision of law, the contract would not have been enforceable. The learned counsel has strongly placed reliance on the decision of this Court in the case of **Sri Ashok Goenka Vs. Chandra Bhushan Singh, 2010 (1) P.L.J.R. 317**. No other submission has been made on behalf of the appellant.

After perusal of the judgments of both the courts below and considering the submissions, it is manifest that the execution of the unregistered deed of agreement for sale dated 31.05.2004 (Ext. 2) acknowledging the previous agreement for sale on 08.12.1997 and the receipt of part of the consideration money by way of advance, has not been denied by the defendant. Both the courts below, on the basis of appreciation of oral and documentary evidence, have come to the conclusion that the plaintiff is entitled to the decree for grant of specific performance of contract, as prayed. Both the courts below have also repelled the objection raised on behalf of the defendant on the basis of Section 17 (1-A) of the Registration Act holding that the unregistered deed of agreement for sale is admissible in evidence

and can be enforced by a decree for specific performance of contract.

The question of admissibility of an unregistered agreement for sale is no longer res integra in view of the dictum of the Apex Court in the case of **S. Kaladevi Vs. V.R. Somasundaram, (2010) 5 SCC 401** and **SMS Tea Estates (P) Ltd. Vs. Chandmari Tea Company (P) Ltd., (2011) 14 SCC 66**. In **S. Kaladevi** (supra) their lordships have laid down as follows:-

“12.....The main provision in Section 49 provides that any document which is required to be registered, if not registered, shall not affect any immovable property comprised therein nor such document shall be received as evidence of any transaction affecting such property. The proviso, however, would show that an unregistered document affecting immovable property and required by the 1908 Act or the Transfer of Property Act, 1882 to be registered may be received as an evidence to the contract in a suit for specific performance or as evidence of any collateral transaction not required to be effected by registered instrument.....”

“13.....”

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To the aforesaid principles, one more principle may be added, namely, that a document required to be registered, if unregistered, can be admitted in evidence as evidence of a contract in a suit for specific performance.....”

In **SMS Tea Estates** the same view has been reiterated by the Apex Court as follows:-

“11.....Section 49 makes it clear that a document which is compulsorily registerable, if not registered, will not affect the immovable property comprised therein in any manner. It will also not be received as evidence of any transaction affecting such property, except for two limited purposes. First is as evidence of a contract in a suit for specific performance. Second is as evidence of any collateral transaction which by itself is not required to be effected by registered instrument.....”

In view of the dictum aforesaid, this Court does not find substance in the submission on behalf of the appellant relating to the inadmissibility of the unregistered agreement for sale (Ext. 2) in the suit.



The submission on behalf of the appellant on the basis of Section 17 (1-A) Registration Act is also misconceived in view of the limits as set out in the said provision itself stipulating that the documents containing contracts to transfer of immovable property for consideration are required to be registered for the purpose of Section 53 A of the Transfer of Property Act and non-registration of such document would have no effect for the purpose of the said Section 53 A. In other words, an unregistered deed of agreement for sale coupled with delivery of possession to the transferee in part performance cannot provide the protection of the possession of the transferee as envisaged under Section 53 (A) of the T.P. Act. In fact, the decision in the case of **Sri Ashok Goenka** (supra) has only recognized this limited application of Section 17 (1-A) of the Registration Act and has not held that an unregistered agreement for sale would not be admissible in evidence in a suit for specific performance of contract in view of this provision.

So far as the submission that an agreement for sale of immovable property on the basis of an unregistered deed of agreement for sale could not be enforceable neither any provision of law nor any precedent has been brought to the notice of the court on behalf of the appellant. This Court is however of the view

that in case, the plaintiff succeeds in establishing the fact of agreement for sale even though evidenced by an unregistered deed, the relief for a decree for specific performance of contract cannot be refused only on the basis of want of registration of the said deed.

For the aforesaid reasons and discussions, this Court is not inclined to align with the submissions on behalf of the appellant and does not find any substantial question of law arising for consideration in this appeal which is, accordingly, dismissed.

(V. Nath, J)

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