

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1114 of 2016

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Tribeni Sao

.... Petitioner/s

Versus

Ram Dheyman Singh

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Abhishek

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 10-03-2016

Heard the learned senior counsel for the petitioner.

The learned senior counsel submitted that the suit for specific performance of contract has been filed by the respondent against the petitioner. The petitioner raised objection in the written statement that the so called agreement is forged and fabricated and in fact, the defendant has not executed the agreement to sale. After evidences of both the parties, the Court below fixed the case for judgment but at the time of passing the judgment, the Court below by the impugned order held that it is necessary to examine the disputed signature on the alleged agreement and the admitted signature of the defendant and, therefore, deferred the passing of the judgment and directed to take steps for comparison.

The learned senior counsel further submitted that the agreement is unregistered and, therefore, it is unenforceable in view of the amendment of the Registration Act, Section 17 and the

Transfer of Property Act in the year 2001.

Perused the order passed by the Court below. So far the objection that the agreement is unregistered is concerned, it may be stated that this is a suit for specific performance of contract and for enforcement of the contract, the agreement is not required to be compulsorily registered.

The Hon'ble Supreme Court in the case of **Aloka Bose v. Parmatma Devi and Ors., AIR 2009 Supreme Court 1527** has held that "all agreements of sale are bilateral contracts as promises are made by both - the vendor agreeing to sell and the purchaser agreeing to purchase. It cannot be said that unless agreement is signed both by the vendor and purchaser, it is not a valid contract. Even an oral agreement to sell is valid. If so, a written agreement signed by one of the parties, if it evidences such an oral agreement will also be valid. Moreover, in India, an agreement of sale signed by the vendor alone and delivered to the purchaser, and accepted by the purchaser, has always been considered to be a valid contract. In the event of breach by the vendor, it can be specifically enforced by the purchaser."

So far the submission of the learned senior counsel that the Court below at the time of passing the judgment, has deferred it and has directed for opinion of the expert, it may be mentioned

here that Hon'ble Supreme Court in the case of **K.K. Velusamy vs. N. Palanisamy, (2011)11 Supreme Court Cases 275** has held that the Court in appropriate cases can exercise its discretion to permit reopening of evidences and/or recalling of witnesses for further examination/cross-examination after evidence led by the parties is concluded and arguments have been commenced or even when arguments have been concluded and case has been reserved for judgment in exercise of inherent jurisdiction under Section 151 C.P.C.

In the present case, from perusal of the order, it appears that the Court below recorded finding that for the decision of the real question in controversy between the parties, it is necessary to obtain opinion of the expert.

In such view of the matter, in my opinion, the Court below has rightly exercised the discretionary jurisdiction. Therefore, there is no question of interference in supervisory jurisdiction under Article 227 of the Constitution arises. If report is obtained, the petitioner is at liberty to file objection petition.

Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

Saurabh/-

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