

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.128 of 2014

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Khalil Mian, son of Ajij Mian, resident of Mohalla Bhabua Chhawani Mohalla,
Ward No. 4(old) Ward No. 9 (New), P.S. Bhabua, District Kaimur at Bhabua
..... Defendant Appellant

.... Appellant

Versus

1. Hridya Narain Singh
2. Anil Kumar Singh, both sons of Markandey Singh, resident of Village Dihra,
P.S. Bhabua, at present Bhabua Chhawani Mohalla, Ward No. 4(Old), Ward
No. 9 (New), P.S. Bhabua, District Kaimur at Bhabua
..... Plaintiffs Respondents

.... Respondents

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Appearance :

For the Appellant/s : Mr. Parwej Khan

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 17-10-2016

Heard learned Counsel for the appellant.

2. The defendant in the suit is the appellant in this appeal against the judgment and decree of affirmance granting decree to the plaintiffs as prayed. The plaintiffs filed the suit for specific performance of contract for sale against the defendant on the basis of two agreements for sale said to have been executed by the defendant with regard to the land mentioned in Schedule 'Ka' and 'Kha' of the plaint. The defendant denied the assertion of the plaintiffs and resisted the grant of decree to the plaintiffs as prayed.

3. Both the courts below have concurrently found that the two deeds of agreements for sale executed by the defendants in favour of the plaintiffs are genuine and legally enforceable documents evidencing agreement for sale of the suit land. The suit was accordingly decreed and thereafter the appeal has also been dismissed by the impugned

judgment and decree.

4. Learned Counsel for the appellant has submitted that both the courts below have failed to consider that the plaintiff has failed to establish his readiness and willingness to perform his part of the contract which is a *sine que non* for grant of a decree for specific performance of contract. The learned Counsel for the appellant has placed the portion of the judgment of the appellate court below whereby deposition made by the plaintiff as PW 7 has been mentioned, in order to point out that the plaintiff has stated about his readiness to perform his part of the contract with regard to only the first agreement for sale and there was no statement with regard to his readiness for the second agreement for sale. The submission has, therefore, been made that both the courts below have erred in law in not considering the said aspect and, therefore, substantial question of law arises for consideration in this appeal. No other submission has been made on behalf of the appellant.

5. After perusal of the judgments of both the courts below and considering the submission, it is manifest that specific issue has been framed in the suit with regard to the readiness and willingness of the plaintiff to perform his part of the contract. Both the courts below, besides considering other oral and documentary evidence, have taken into notice the Ext. 4, which is an agreement executed by the defendant for extension of time and Ext. 5, which is the reply to the notice send by the defendant bearing his signature. Though the aforesaid document (Ext. 4) was admitted in evidence with objection but the learned Counsel for the appellant has failed to point out any evidence which has been led to discredit the said documentary evidence. From the conjoint reading of

Ext. 4 and Ext. 5 the courts below have come to the conclusion that the defendant had clearly admitted the readiness and willingness of the plaintiff to perform his part of the contract and it was due to personal hardship of the defendant that the sale deeds could not be executed. The findings by both the courts below on this issue have been recorded after elaborate consideration of evidence which were acceptable and could have been relied upon.

6. This Court has not been persuaded to find any perversity or unreasonableness in the conclusion by the courts below.

7. As no other submission has been made on behalf of the appellant, this Court finds that there is no substantial question of law arising for consideration in this appeal, which is accordingly dismissed.

(V. Nath, J.)

Snkumar/-

AFR/NAFR	
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