

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.213 of 2015

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1. Neelam Devi Wife of Late Mahendra Poddar
 2. Khusbu Devi
 3. Nisha Kumari Both Daughters of Late Mahendra Podar All resident of Karharia Raod, Banka, Nagar Palika Ward No.2, Nagar Panchayat Ward No.8, P.S. and District Banka.

..... Defendants Appellants

.... Appellants

Versus

Smt. Nilam Devi wife of Sudin Prasad Sah, Resident of Karharia Raod, Banka, Police Station and District Banka.

..... Plaintiff Respondent

.... Respondent

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Appearance :

For the Appellant/s : Mr. Ajay Kumar Singh, Advocate
Mr. Viveka Nand Singh, Advocate

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 19-10-2016

Heard Mr. Ajay Kumar Singh, learned Counsel appearing for the appellants.

2. The defendants are the appellant in this appeal against the judgment and decree of affirmance, granting decree of specific performance of contract for sale to the plaintiff, as prayed.

3. The plaintiff filed a suit for a decree for specific performance of contract for sale of the suit land against the defendants on the basis of a registered agreement for sale dated 14.11.2003. The defendants contested the assertion of the plaintiff and came out with a case that in fact the said registered deed was not intended to be an agreement for sale rather it was by way of security for the loan taken by the defendants from the plaintiff. The defendants further relied upon Sada Ekrarnama executed by the plaintiff on the same date disclosing the fact regarding security for the sale. It was also the case of the defendants that prior to



the agreement for sale dated 14.11.2003, the parties had entered into similar agreements for sale twice earlier in the year 2001 and 2002, but as those agreements were only by way of security, therefore, the defendants carried the impression that the present document was also by way of agreement for sale. It was also the case of the defendants that in fact he had secured loan of ₹. 8500/- only but fraudulently the amount was mentioned as ₹ 85,000/-.

4. Both the courts below after scrutiny of pleadings and evidence of the parties have concurrently come to the conclusion that the registered deed dated 14.11.2004 evidenced agreement for sale executed by the defendants in favour of the plaintiff for sale of the suit land after taking advance amount of ₹ 85,000/- . Accordingly, the suit was decreed directing the defendants to accept the remaining consideration money and execute the sale deed and granting the decree of specific performance of contract as prayed by the plaintiff. In appeal by the defendants, the appellate court below on reappraisal of evidence affirmed the findings of fact as recorded by the trial court and dismissed the appeal by the impugned judgment and decree.

5. Mr. Singh, learned Counsel appearing for the appellants, has firstly submitted that the findings by both the courts below that the registered deed dated 14.11.2003 was an agreement for sale is clearly perverse as the same has been recorded ignoring the material evidence on record including the Sada Ekrarnama dated 14.11.2003 (Ext. B/1). It has been propounded that the conduct of the plaintiff in entering into sada agreement for sale in 2001 and 2002 cannot be ignored and when that conduct is considered along with the sada ekrarnama (Ext. B/1) the fact becomes evident that the intention of the parties in executing the



registered deed dated 14.11.2003 was only to create a document of security and not a document for agreement for sale. The learned Counsel has prayed before the Court to enter into appreciation of documentary evidence in order to vary the findings recorded by both the courts below. The next limb of argument on behalf of the appellants is with regard to the finding on readiness and willingness of the plaintiff in performing her part of the contract. It has been argued that except the legal notice sent to the defendants prior to the filing of the suit, no other evidence has been led by the plaintiff to establish her readiness and willingness. It has been contended that the finding by both the courts below in this regard is also vitiated and cannot be legally sustained. No other submission has been made on behalf of the appellants.

6. After considering the submission and perusal of the judgments of both the courts below, it is manifest that the plaintiff has filed the suit seeking a decree for specific performance of contract for sale against the defendants on the basis of registered agreement for sale dated 14.11.2003. The execution and registration of the document has been denied by the defendants. However, the contention on behalf of the defendant - appellants is that the terms of the contract as contained in the registered deed dated 14.11.2003 can be interpreted in view of the unregistered ekrarnama (Ext. B/1) which will thereafter show that in fact the parties intended to create a document of security and not a document for agreement for sale. But, in view of the provisions as contained in Sections 91 and 92 of the Evidence Act, the term of the contract evidenced by a registered document cannot be contradicted or varied on the basis of oral or documentary evidence which are inadmissible for the said purpose. Examining this aspect from another angle also, it is not



disputed on behalf of the appellants that prior to the filing of the suit the legal notice was sent and received by the defendants. The said legal notice discloses the intention of the plaintiff to pursue the agreement for sale and the offer by the plaintiff to the defendants to accept the remaining consideration money and execute the sale deed. The defendants did not reply to the said legal notice. The defendants even thereafter did not take any step for declaration against the registered document dated 14.11.2003 seeking relief that in fact it was only a document creating security and not an agreement for sale. During the course of submission also no explanation on behalf of the appellants could be shown to have been furnished in the court below in this regard.

7. The specious plea has been raised on behalf of the appellants that in fact the defendant-appellant was illiterate person and the plaintiff played fraud upon her. However, this submission has failed in view of the admitted fact that even prior to 14.11.2003 there had been two agreements for sale in between the parties and even after receipt of the legal notice by the plaintiff before filing of the present suit the defendants kept mum and did not take any step against the registered document dated 14.11.2003. So far as the submission on behalf of the appellants regarding readiness and willingness on the part of the plaintiff for his part of the contract, it is admitted by the defendants that a legal notice sent by the plaintiff was received by the defendants wherein the plaintiff offered to get the sale deed executed by the defendants after payment of the remaining consideration money. The law is now well settled by a Three - Judges Bench of the Apex Court in ***R.C. Chandiok v. Chuni Lal Sabharwal, (1970) 3 SCC 140*** that the readiness and willingness must not be adjudged in a straight-jacket formula and the



entirety of facts and circumstances of each case will have to be considered in this regard. The conduct of the defendants does not inspire confidence so far when the defendants did not send any reply to the legal notice to the plaintiff for performance of the conduct, either refusing or accepting the offer of the plaintiff.

8. This Court, therefore, does not find substance in the submission on behalf of the appellants in this regard. There is also no material to further substantiate the submission that it was ₹ 8500/- which was secured as loan amount by the defendants, in view of admitted document I.e. registered document dated 14.11.2003 as well as the sada ekrarnama (Ext. B/1) wherein the amount of ₹ 85,000/- has been mentioned.

9. The findings of fact have been recorded by both the courts below on appreciation of evidence which were acceptable and could have been relied upon. This Court has not been persuaded to find any perversity or illegality in the same.

10. Ex consequenti, this Court does not find any substantial question of law arising for consideration in this appeal, which is, accordingly, dismissed.

(V. Nath, J.)

Snkumar/-

AFR/NAFR	
CAV DATE	N/A
Uploading Date	13.12.2016
Transmission Date	N/A

