

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.118 of 2013

=====

Ramesh Kumar Tiwari S/O Late Yamuna Tiwari Ex. Secretary, Saran Sahkari Grih
Nirman Samiti, At 150 Anandipur, P.S. S.K. Puri, District Patna.

.....Plaintiff Appellant

.... Appellant

Versus

1. Ganpat Singh S/O Late Bardeo Singh R/O Village Ramjichak Digha, P.S.
Digha, District Patna.
2. Pankaj Kumar Singh S/O Ganpat Singh R/O Village Ramjichak Digha, P.S.
Digha, District Patna.
3. Parween Kumar Minor S/O Ganpat Singh Under The Guardianship Of His
Father And Natural Guardian R/O Village Ramjichak Digha, P.S. Digha,
District Patna.

..... Defendants Respondents

.... Respondents

=====

Appearance :

For the Appellant/s : Mr.

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 14-07-2016

Heard learned Counsel for the appellant.

2. The plaintiff is the appellant in this appeal against the
judgment and decree of affirmance dismissing the suit.

3. The suit was filed for specific performance of contract
against the defendants on the basis of agreement for sale said to have
been executed by the defendants on 11.2.2002. The defendants
appeared in the suit by filing Vakalatnama, but thereafter they left pairvi
and the suit proceeded under Order 8 Rule 10 CPC.

4. The trial court returned the finding, which included the
finding that the agreement for sale dated 11.2.2002 propounded by the
plaintiff was not a genuine document. In appeal by the plaintiff, the
appellate court on reappraisal of evidence has affirmed the finding of the

trial court and dismissed the appeal by the impugned judgment and decree.

5. Learned Counsel for the appellant has submitted that as the suit proceeded under Order 8 Rule 10, therefore, the finding by both the courts below that the agreement for sale which was the basis of the claim of the plaintiff was not a genuine document, could not have been recorded. It has been propounded by the learned Counsel for the appellant that once after the defendants failed to deny the validity and genuineness of the agreement for sale there was no scope for the courts to reach to a definite finding. It has also been submitted that the courts below have compared the signature of the defendants on the agreement for sale with the signature appearing on the Vakalatnama in absence of the fact that the said Vakalatnama was not an admitted document. It has been further argued that the plaintiff was not required to prove the title of the defendants and the findings in that regard was not warranted.

6. After considering the submission and perusal of the judgments of both the courts below it is pellucid that the suit was filed by the plaintiff for specific performance of contract for sale of the suit land in favour of the plaintiff on the basis of agreement for sale dated 11.2.2002. Both the courts below on the basis of materials on record, including the Vakalatnama filed on behalf of the defendants in the suit, have come to the conclusion that the said agreement for sale is not a genuine document. It is not the case of the appellant nor there anything on record that any denial or challenge to the Vakalatnama filed on behalf of the defendants in the suit was ever made by the appellant either in the suit or in the appeal or before any forum. The submission that as the suit

proceeded under Order 8 Rule 10 CPC after the defendants failed to file their written statement, the courts below were not required to record a finding with regard to the legality and validity of the agreement for sale, the law in this regard is very well settled by the Apex Court in the case of **Balraj Taneja v. Sunil Madan AIR 1999 SC 3381**, whereby it has been held that even when the suit has proceeded under order 8 Rule 10 CPC the court may require the plaintiff to prove the fact and further that the court is not absolved from its legal duty to record finding of fact. Their Lordships have categorically ruled out the grant of decree straightway to the plaintiff in a case where the suit proceeded under order 8 Rule 10 CPC.

7. Once after the courts have recorded the finding that the agreement for sale dated 11.2.2002 was not a genuine document, and the same has been recorded on the basis of evidence which is acceptable in law, this Court does not find any perversity or unreasonableness in the said finding. The findings on other issues by the courts below are also based upon appreciation of evidence on record.

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

Snkumar/-

(V. Nath, J.)

AFR/NAFR	
CAV DATE	N/A
Uploading Date	05.09.2016
Transmission Date	N/A