

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.592 of 2016

1. Kiran Devi, Wife of Shri Kundan Singh
2. Deepak Kumar, Minor Son of Shri Kundan Singh, under
guardianship of his father Shri Kundan Singh @ Kundan
Kumar

Both Resident of village- Domanchak, P.O.-
Manoharpur Kachhuara, District- Patna.

... .. Appellants

Versus

Girish Chandra Singh, Son of Devanand Singh, Resident of
Village- Chakbihri, Post Office- Nandlal Girish Chandra Singh,
Son of Devanand Singh, Resident of Village- Chak Bihri, Post
Office, Nandlal Chhapra, P.S. Gopalpur, District- Patna.

... .. Respondent

Appearance :

For the Appellant/s	:	Mr. Bijay Bihari Sinha Mr. Sanjay Kumar Mr. Binod Singh
For the Respondent/s	:	Mr. Subhash Prasad Singh Mr. Dilip Kumar Ms. Kiran Kumari

**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

JUDGMENT AND ORDER
ORAL

Date : 14-09-2017

Heard learned Counsel for the appellants and learned
Counsel for the respondent.

2. This appeal, under Section 100 of the Civil
Procedure Code, has been preferred by the appellants, being
aggrieved by the judgment and decree, dated 02.07.2016, passed,
in Title Appeal No. 03 of 2012, by learned Additional District



Judge X, Patna, whereby he has affirmed the judgment and decree, dated 18.11.2011/25.11.2011, passed, in Title Suit No. 144 of 2007, by learned Sub Judge III, Patna.

3. The suit for specific performance of contract was filed by the respondent herein with a plea that an agreement to sale was executed by the appellant no. 1 on 26.02.2002 for sale of the suit property for a sum of Rs. 2,00,000/-. At the time of execution of the deed of agreement to sale, the appellant no. 1/defendant no. 1 had received a sum of Rs. 30,000/- from the respondent/plaintiff and, admittedly, she had received a sum of Rs. 50,000/- subsequently.

4. From the concurrent finding of fact recorded by the Courts below, it appears that the admitted position which emerged on the basis of pleadings and evidence adduced at the trial before the Court below, was that the deed of agreement to sale was executed for consideration of a sum of Rs. 2,00,000/-, out of which the appellant no. 1 had received a sum of Rs. 82,000/-.

5. There was dispute only as to whether the respondent/plaintiff was willing to pay the rest of the consideration amount or not within the stipulated period. Both the Courts below had held that the respondent/plaintiff was willing to pay the amount, but the appellant no. 1 refused to execute the sale deed.



6. Considering the evidence on record, the Trial Court decreed the suit in favour of the respondent/plaintiff with a direction to the appellant no. 1 to execute the sale deed in respect of suit land in favour of the respondent/plaintiff on payment of balance consideration money within 90 days.

7. The substantial question of law, which learned Counsel for the appellants wants to raise is that by operation of Section 54 of the Specific Relief Act, 1963, the suit had become time barred and the Court below ought not to have decreed the suit property in favour of the respondent/plaintiff. In support of his contention, learned Counsel for the appellants has submitted that if the evidence adduced at the trial is taken into account, 23.09.2002 can be treated to be the last date of refusal by to execute the sale deed. In such circumstance, learned Counsel for the appellant submits that the Court below ought not to have entertained the suit for specific performance filed in the year 2007.

8. This aspect of the matter has been dealt with specifically by the learned Appellate Court, in paragraph 21 of the impugned judgment. On appreciation of evidence, the Court below has reached a conclusion that the limitation was to run from 01.04.2007 since this was the last date when the respondent/plaintiff had requested the appellant no. 1 to receive



rest consideration money for executing the sale deed in his favour, which was refused by appellant no. 1. The suit was filed on 04.04.2007.

9. Learned Counsel for the appellants has submitted that the Courts below have wrongly appreciated the evidence on record while counting the period of limitation.

10. This Court, sitting in second appeal, under Section 100 of the Civil Procedure Code, need not re-appreciate the evidence, which has already been appreciated and re-appreciated by the two Courts below. In my view, this appeal does not involve any substantial question of law to be adjudicated upon by this Court.

11. This appeal does not deserve to be admitted and is accordingly dismissed.

12. The interlocutory application, if any, is also disposed of accordingly.

(Chakradhari Sharan Singh, J)

Prabhakar Anand/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	19-09-2017
Transmission Date	N/A

