

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.69 of 2012

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1. Awadhesh Kumar Singh S/O Sri Gajendra Narayan Singh R/O Old Hospital Para, Near Railway Station, Katihar, P.S.- Katihar, District- Katihar
 2. Lakhan Lal Agrawal S/O Sri Bisheshwar Lal Agrawal R/O Shiv Mandir Chowk, Bara Bazar, Katihar, Katihar, P.S.-Katihar, District- Katihar

.... Appellant/s

Versus

1. Shyam Narayan Jha S/O Late Sunder Jha R/O Argara Chowk, Bara Bazar, Bara Bazar, Katihar, P.S.-Katihar, District- Katihar
 2. Smt. Ganga Devi W/O Shyam Narayan Jha R/O Argara Chowk, Bara Bazar, Bara Bazar, Katihar, P.S.-Katihar, District- Katihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Anshuman Jaipuriyar
 For the Respondent/s : None.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
ORAL JUDGMENT

Date: 15-12-2017

1. This appeal has been preferred by the plaintiffs- appellants against the judgment and decree dated 4.2.2012 and 24.2.2012 respectively passed by the Sub Judge III, Katihar in Title suit no. 02/1999 by which and whereunder he dismissed the aforesaid suit on contest but without cost.

2. Plaintiffs- appellants filed Title suit no. 02/1999 against the defendants-respondents for specific performance of the contract seeking relief that the defendants-respondents be directed to execute absolute sale deed in favour of plaintiffs- appellants in respect of



suit land described in Schedule A of the plaint, failing which plaintiffs- appellants shall be at liberty to get the sale deed executed through the process of the court and furthermore, they sought relief that they also be put in possession of the suit land.

3. In brief, plaintiffs' case, as emerged out, from the pleadings that on the request of the defendant no.1- respondent no.1, plaintiff no.1- appellant no.1 had given Rs 2,36,400/- to the defendant no.1-respondent no.1 on 08.10.1995 for taking distributorship of soft drink and the defendant no.1-respondent no.1 granted **Khesta** receipt thereof. Again, plaintiff no.1- appellant no.1 deposited banker cheque of Rs 2 lakh in Central Bank, Railway, Katihar in favour of Anchor edible India Private limited on 01.11.1995 on the assurance of the defendant no.1- respondent no.1. Similarly, plaintiff no.2- appellant no.2 also deposited banker cheque of Rs 1,99,200/- for taking distributorship of soft drink at the instigation of the defendant no.1-respondent no.1. However, later on, plaintiffs- appellants doubted about credibility of the aforesaid company and asked the defendant no.1- respondent no.1 to get the above stated advance returned



but the defendant no.1-respondent no.1 expressed his inability to return advance amount immediately because according to the rules of the company, advance amount was to be returned after three or four months. However, the defendants-respondents acknowledged the above stated dues and jointly agreed to execute sale deed in respect of plot no. 2577 appertaining to khata no. 1394 of village Dalan mohalla Hirdayaganj by 15th January, 1996 and accordingly, they executed unregistered agreement for sale. However, at the time of execution of agreement for sale, it was also agreed by the parties that the defendant no.1-respondent no.1 shall take authority letter from plaintiffs- appellants for withdrawal of the amount deposited by them with the company. Plaintiffs-appellants requested several times to the defendants-respondents to execute absolute sale deed but they avoided and thereafter plaintiffs- appellants sent registered notices to the defendant no.1-respondent no.1 on 28.11.1998 and 07.12.1998 but the same could not be served upon the defendant no.1-respondent no.1 as the defendants-respondents had gone to some undisclosed place. However, plaintiffs- appellants were always ready



and willing to perform the part of contract and they are still willing and ready to perform their part of contract.

4. It would appear from perusal of lower court record that notices were sent to the defendants-respondents but notices could not be served upon them and thereafter, notices were published in newspaper and substituted notice upon the defendants-respondents was accepted by the court below and thereafter, trial court, proceeded ex parte and having recorded the evidences of plaintiffs- appellants, passed the impugned judgment dismissing the suit of the plaintiffs- appellants mainly on this ground that so-called agreement for sale was not a registered document and genuiness of the aforesaid document was doubtful. Learned court below further came to the conclusion that plaintiffs- appellants could not succeed to prove right and title of the defendants-respondents in respect of the suit land.

5. It would appear from perusal of the record that plaintiffs- appellants got examined, altogether, five witnesses and also got exhibited so-called agreement for sale dated 25.12.1995 as exhibit 1. Signature of PW 2 on exhibit 1 as exhibit 1/A. Signature of PW 3 on exhibit 1



as exhibit 1/B. Signature of PW 4 on exhibit 1 as exhibit 1/C and signature of PW 5 on exhibit 1 as exhibit 1/D.

6. Learned counsel appearing for the plaintiffs-appellants assailed the impugned judgment and decree arguing that learned court below misinterpreted the provisions of Transfer of Property Act as well as Registration Act and wrongly came to the conclusion that exhibit 1 has no legal value for want of registration. He, further, submitted that learned court below also wrongly appreciated evidences available on the record and doubted the claim of the plaintiffs- appellants on the ground that plaintiffs- appellants had not taken any step to lodge criminal case against the defendants-respondents. He, further, submitted that learned court below doubted credibility of the witnesses examined on behalf of the plaintiffs- appellants only on trivial ground and failed to take note of this fact that plaintiffs' witnesses clearly proved execution of exhibit 1 by the defendants-respondents.

7. It is pertinent to mention here that this court, too, had issued appeal notice to respondents but appeal notice could not be served and thereafter, on the prayer of



the plaintiffs- appellants, appeal notice was published in daily newspaper and subsequently, substituted service of appeal notice was accepted and this appeal was heard. It is also necessary to mention here that at the time of hearing of this appeal, no one had appeared on behalf of the respondents.

8. From perusal of the impugned judgment, it would appear that court below formulated two questions for disposal of Title suit no. 02/1999. The first question was formulated by the court below as to whether exhibit 1 had any force in the eye of law and second question was formulated by the court below as to whether under section 16(C) of the Specific Relief Act plaintiffs were/ are ready and willing to perform the contract.

9. Learned court below, while dealing with first question, came to the conclusion that exhibit 1 has no force in the eye of law as it is not a registered document and hit by section 54 of the Transfer of Property Act but in my view, section 54 of the Transfer of Property Act is not at all applicable in the present case because section 54 of the Transfer of Property Act relates to sale of immovable property and in the present case, plaintiffs



have based their claim only on an agreement for sale

10. Section 17 of the Registration Act, 1908 has been amended by Act no. 48 of 2001 and one section i.e. section 17 (1-A) was inserted by Act 48 of 2001 and the aforesaid provision says that the documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53-A of the Transfer of Property Act, 1882, shall be registered if they have been executed on or after the commencement of the Registration and Other Related Laws (Amendment) Act, 2001, and if such documents are not registered on or after such commencement then, they shall have no effect for the purposes of the said section 53-A.

11. The aforesaid provision, specifically, speaks that the documents containing contracts to transfer for consideration on any immovable property shall be registered for the purpose of section 53-A of the Transfer of Property Act, 1882, if the aforesaid documents are executed on or after the commencement of the Registration and Other Related Laws (Amendment) Act, 2001.

12. It is obvious that the aforesaid provision



relates to section 53A of the Transfer of Property Act and for application of section 53A of the Transfer of Property Act, 1882, possession of the property must be in possession of transferee and, therefore, section 17(1-A) of the Registration Act, 1908 is not applicable in the present case. Admittedly, possession of the disputed land has not been given to plaintiffs- appellants. Moreover, it is obvious from the pleading of the plaintiffs- appellants that agreement for sale in the present case was executed in the year 1995 whereas amendment in 17 of the Registration Act, 1908 was made in the year 2001. Moreover, in the same section an explanation has been attached which says that a document purporting or operating to effect a contract of the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money. Therefore, the aforesaid explanation clarifies entire controversy and I have no hesitation to hold that there was no requirement of registration of exhibit 1 and learned court below committed error in holding that



exhibit 1 had no effect for want of registration.

13. PW 1 is plaintiff- appellant no.1, himself, and he has supported his case in examination-in-chief and specifically stated at paras 3,4 and 6 of his deposition that he as well as plaintiff- appellant no.2 had given amount to the defendant no.1-respondent no.1 for taking distributorship but subsequently, they lost faith upon company and thereafter, when they asked the defendant no.1-respondent no.1 to get the amount returned, the defendant no.1-respondent no.1 along with the defendant-respondent no.2 executed one written agreement on 25.12.1995 admitting the amount given by plaintiffs-appellants and also agreed to sell suit land to them by 15.1.1996. This witness has proved his signature as well as signature of the defendants-respondents. The agreement for sale dated 25.12.1995 has been brought on record as exhibit 1. The aforesaid deposition of PW 1 is uncontroverted as the defendants-respondents did not appear before the court below to counter the claim of plaintiffs- appellants. It is pertinent to mention here that the defendants-respondents also failed to appear before this court and, therefore, it is obvious that deposition of



PW 1 is uncontroverted. Almost similar statement has been made by PW 2 who is a witness on exhibit 1 and has proved his signature. PW 3 is also a witness on exhibit 1 and he has proved his signature on exhibit 1. Similarly, PW 4 proved signature of plaintiff- appellant no.2 on exhibit 1 as exhibit 1/C. Similarly, PW 5 also proved his signature on exhibit 1 as exhibit 1/ D. All the above stated witnesses supported the case of plaintiffs- appellants and, in my view, only on the basis of some minor contradictions here and there in their deposition, their credibility can not be disputed, particularly, in the circumstances when their statements remain uncontroverted. Plaintiffs have specifically pleaded in their plaint that they are still ready and willing to purchase the suit land in accordance with agreement for sale dated 25.12.1995 and the aforesaid fact has specifically been stated by PW 1 at para 9 of his deposition. Therefore, it is obvious that plaintiffs- appellants are still ready and willing to purchase the suit land.

14. On the basis of the aforesaid discussions, this appeal is allowed and the impugned judgment and decree



dated 4.2.2012 and 24.2.2012 respectively passed by the Sub Judge III, Katihar in Title suit no. 02/1999 is, hereby, set aside and suit of the plaintiffs- appellants is decreed and accordingly, it is ordered that the defendants- respondents must execute absolute sale deed in favour of plaintiffs- appellants in accordance with agreement for sale dated 25.12.1995 within three months from today after taking remaining consideration amount, failing which plaintiffs- appellants shall be entitled to get absolute sale deed executed in respect of the suit land in accordance with agreement for sale dated 25.12.1995 through the process of the court. However, if the suit land has already been transferred to any other person by the defendants-respondents, then in that event, the defendants-respondents shall return the amount in question to respective appellants with simple interest of 8 % per annum from the date of taking of the amount till its realization within three months from the date of judgment. There shall be no order as to cost.

Shahid

(Hemant Kumar Srivastava, J)

AFR	
CAV DATE	6.12.2017
Uploading Date	18.12.2017
Transmission Date	

