

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.168 of 2015

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Dhurpat Thakur, Son of Late Beslal Thakur, resident of village- Pinjour, Police Station- Jehanabad, now Parasbigha, District- Jehanabad. Appellant/s

Versus

Sushila Devi, wife of Late Gopal Prasad, resident of Village- Jhari Sao Lane, Jehanabad, Police Station and District- Jehanabad. Respondent/s

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Appearance :

For the Appellant/s : Mr. Murari Prasad Sinha, Advocate

For the Respondent/s : Mr. Binod Kumar Singh

Ms. Vagisha Pragya Vacaknavi, Advocates

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 15-05-2017

Heard learned counsel for the appellant.

The defendant is the appellant in this appeal against the judgment and decree of reversal granting a decree for specific performance of contract.

The plaintiff (since deceased through L.R.) filed a suit for a decree of specific performance of contract on the basis of a registered agreement to sell. The defendant-appellant appeared in the suit and filed the written statement controverting the assertions made by the plaintiff-respondent denying the genuineness and validity of the agreement for sale. However, the defendant did not examine himself in the suit nor adduced any oral or documentary evidence in support of the allegation of fraud against the plaintiff. The Trial Court however, decided the issues against the plaintiff and dismissed the suit. The appellate Court below on appeal by the plaintiff has reappraised the evidence, reversed the findings of the trial court, allowed the appeal and set aside the judgment and decree passed by



the trial court.

Learned counsel for the appellant has submitted that it was due to wrong advice that the defendant could not examine himself in the suit or did not adduce evidence. It has however, been contended that there was no evidence on record by the plaintiff to establish that the agreement for sale (Ext. 1) has been duly executed by the defendant. Elaborating the submissions, it has been argued that in any case the learned appellate court below ought to have examined the signature appearing on the agreement with the help of handwriting expert before granting the decree to the plaintiff after denial of the same by the defendant. Learned counsel has referred to Section 103 of the Evidence Act in support of his contention that the onus was upon the plaintiff to establish the genuineness and legal validity of the agreement for sale in view of the denial of the same by the defendant. No other submission has been made on behalf of the appellant.

After considering the submissions and perusing the judgment and decree, it is manifest that the agreement for sale, which is the basis for claim of decree for specific performance, is a registered document. It is well settled that it has legal presumption of execution. However, this presumption is rebuttable but in the present case the defendant-appellant did not lead any evidence either oral or documentary to rebut the said presumption and even did not examine himself in the suit in support of his assertions.

In that view of the matter, this Court does not find any



substance in the submission made on behalf of the defendant-appellant that the plaintiff-respondent was legally liable to establish the genuineness of the execution of the registered agreement for sale (Ext. 1). The finding of facts recorded by the appellate court are on the basis of evidence which were acceptable and could be relied upon. This Court is not impressed with the submission made on behalf of the appellant that it was due to wrong advice that the defendant-appellant did not lead evidence in the suit as the fact is also not disputed that such prayer was not made by the defendant even at the appellate stage for leading evidence on the ground of wrong legal advice. This Court thus does not find that the conclusion by the appellate court below is perverse or otherwise bad in law.

Ex consequenti, it is held that there is no substantial question of law arising for consideration in this appeal which is, accordingly, dismissed.

(V. Nath, J)

S.Pandey/-

AFR/NAFR	NAFR
CAV DATE	NA
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