

IN THE HIGH COURT OF JUDICATURE AT PATNA
First Appeal No.244 of 2003

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Rajeshwar Singh, son of Late Ram Anugrah Singh, Resident of village-
Sanchipatti, Chak Shah Abdul Hai, Post- Hajipur, P.S.- Hajipur Town,
District- Vaishali.....Plaintiff..... Appellant

Versus

Mostt. Raj Kumari Devi, wife of Late Muni Lal Singh, R/o village-
Sanchipatti, Chak Shah Abdul Hai, Post- Hajipur, P.S.- Hajipur Town,
District- Vaishali.....Defendant..... Respondent

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Appearance :

For the Appellant/s : Mr. Bhubneshwar Prasad, Advocate
Mr. Sarbottam Kumar Sarkar, Advocate
For the Respondent/s : None

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

C.A.V. JUDGMENT

Date : 27-11-2017

The instant appeal has been preferred against the judgment dated 25.06.2003 and decree dated 11.07.2003 passed in Title Suit No. 272 of 1995 by Sri Ramdev Singh the then Sub-Judge-VIII, Hajipur whereby and whereunder the suit filed by the plaintiff was dismissed on contest with cost.

2. The plaintiff is the appellant and defendant is the respondent.

3. The plaintiff has filed the suit for decree for part performance on the basis of deed of agreement dated 16.06.1994.

4. Briefly stated, the case of the plaintiff is that the grandfather of the plaintiff late Ram Lakhan Singh had got two more brothers Mukhlal Singh and Khublal Singh and defendant Munilal Singh is the son of late Khublal Singh, meaning thereby,



the defendant is the cousin uncle of the plaintiff. The defendant Munilal Singh was married with Raj Kumari Devi, the daughter of Jaimangal Bhagat, of village Kuanpakri, P.S.- Lalganj, District- Vaishali and the defendant is issueless. The disputed land is of new Khata No. 416, plot no. 1863 area 4.5 kattha and plot no. 1866 area 5.5 Kattha situated at mohalla Sanchipatti Chaksah Abdul Hai, P.S.-hajipur Town, District- Vaishali fully detailed in schedule I of the plaint. The disputed land was allotted in the share of the defendant as per partition and he was in possession thereof. The defendant wants to settle in his in-laws village after selling of the lands. He has sold so many plots and for treatment and other works the defendant agreed to sale the disputed land with the plaintiff for Rs. 2 lakhs and as per wishes of the defendant, the plaintiff paid Rs. 1,50,000/- as an advance on 16.06.1994 and the defendant agreed to execute the sale deed with respect to the disputed lands within one year in favour of the plaintiff after receiving the balance consideration amount Rs. 50,000/-. Accordingly, the defendant executed the deed of agreement on 16.06.1994 in favour of the plaintiff and original deed of agreement was handed over to the plaintiff. The said agreement was written on the instruction of the defendant by Deed Writer and the Deed Writer wrote the contents of the deed and the defendant



after hearing the same put his left thumb impression and at the instruction of the defendant, identifier and witnesses put their signatures. After some times the plaintiff arranged the money and then the plaintiff requested the defendant to execute the sale deed after receiving the balance consideration amount but the defendant started evading the matter on one pretext or the other, resulting, the plaintiff suspected his intention and then the plaintiff sent registered legal notice on 17.05.1995 but the defendant refused to receive the same and then, again, the notice was sent which was received by the defendant and then the defendant replied the same with wrong and incorrect statement, resulting, the plaintiff filed the suit.

5. The defendant Munilal Singh died during pendency of the suit. He has filed his written statement and after his death Masomat Raj Kumari Devi was substituted vide order dated 21.09.2009.

6. The case of the defendant, briefly stated, is that the plaintiff has brought this suit with wrong allegations. The plaintiff has got no cause of action for the suit. The suit is barred by law of limitation, estoppel, waiver and acquiescence. The plaintiff has got no income to purchase the same, there was no talk to sale the land between the plaintiff and the defendant. The defendant never



executed any deed of agreement and never received advance of Rs. 1,50,000/-. The plaintiff was not in a position to pay Rs. 1,50,000/- and there was never any partition in between the defendant and his co-sharers. Ramlakhan Singh was the manager of the joint family and after his death Ram Anurag Singh, the father of the plaintiff, became Karta and after death of Ram Anuragh Singh his two sons Rajeshwar Singh and Shankar Singh went in bad company, resulting, they were not taking interest in agricultural works and then the defendant separated in plot no. 1863 area 16 kattha 14 Dhur, plot no. 1866 area 16 Kattha 3 Dhur and got his share 5 Kattha 10 Dhur and 5 Kattha and 7 Dhur in those plots and started doing agricultural works very well and then the plaintiff made a plan to grab those lands. The defendant never thought to settle at his in-laws place. The defendants never talked with the plaintiff to sale his lands for Rs.2 lakhs and the defendant was never in need of money. The defendant sold his land situated in Diyara in 1985 thereafter in the year 1993 the defendant again became ill and then his nephew, the plaintiff, got agreed Janki Devi to purchase the land of defendant bearing plot no. 1880 area 1 kattha and 13 Dhur with Rs. 25,000/- and on 11.11.1993 the plaintiff brought the defendant at Hajipur Registry Office, where the sale deed was executed and on that sale deed the plaintiff was himself witness



and identifier. On that date there was no talk to sale another land between the plaintiff and the defendant. The plaintiff and his brother being in bad company, sold plot no. 1880 area 1 Kattha for Rs. 30,000/- on 25.07.1999 and again sold 7 Dhur land of that plot for Rs. 10,000/- on 08.10.1990. Thus, under the circumstances, the statement of the plaintiff that he gave Rs. 1,50,000/- on 16.06.1994 is totally false and baseless. On the alleged deed of agreement, there is no signature of Deed Writer and the defendant did not put his left thumb impression on the deed of agreement. The defendant never instigated anyone to become identifier and witness. The alleged deed of agreement dated 16.06.1994 is forged and fabricated. On 11.11.1993 when the defendant went with the plaintiff to execute the sale deed then, it appears that the plaintiff got thumb impression of the defendants on some stamp and plain paper without informing defendant which has been created as deed of agreement after bringing the Deed Writer in collusion and the defendant is handicapped from birth and he was married also with handicapped girl Raj Kumari Devi. The plaintiff has brought the suit to grab the land of Plot No. 1864 and 1966. The plaintiff has to prove the alleged deed of agreement, further to prove the name of the Deed Writer, the number of stamp



and the name of vendor of the stamp. The suit of the plaintiff is fit to be dismissed with cost.

7. On the pleadings of the parties, the following issues have been framed on re-cast:-

(I) Whether the suit as framed is maintainable ?

(II) Is the plaintiff got valid cause of action for bringing the suit ?

(III) Is the suit barred by law of estoppel, waiver, law of limitation and acquiescence ?

(IV) Is the deed of agreement to sale dated 16.06.1994 is operative and valid and is the plaintiff entitled to get a decree on the basis of the deed.

(V) Is the plaintiff entitled to get possession over the disputed land on the basis of deed of agreement dated 16.06.1994 ?

(VI) Is the plaintiff entitled for any other relief/reliefs ?

The learned Sub-Judge took up the issue no. iv and v at first and after considering the materials available on the record decided the issue no. iv and v against the plaintiff and in favour of the defendant holding that the deed of agreement dated 16.06.1994 (Ext. 4) is illegal, inoperative and not binding and on the basis of that deed of agreement the plaintiff is not entitled to get possession and title. Issue no. i and ii were also decided against the plaintiff



and in favour of the defendant. Issue No. iii and iv were not pressed and accordingly, the suit was dismissed on contest with cost. The Advocate's fee was adjudged at Rs. 64/- and Advocate Clerk's fee was adjudged at Rs. 16/-.

8. The plaintiff being aggrieved and dissatisfied with the said judgment and decree filed this appeal challenging the sustainability of the same on the grounds that the judgment and decree of the learned court below is bad in law as well as on facts, hence, it is fit to be set aside. The learned court below has riled solely upon the pleadings and points of the defendants and miserably failed to appreciate the points put forward and evidence adduced by the plaintiff appellant. The judgment is based on conjectures and surmises. Learned Court below has erred in holding that the deed of agreement dated 16.06.1994 filed by the plaintiff appellant is null and void and inoperative document. Further the learned court below wrongly held that the said deed of agreement was forged, fabricated and antedated document and the reasons for so holding is misconceived, erroneous and non-sustainable in the eye of law. The learned court below has totally discarded the oral and documentary evidence adduced on behalf of the appellant and solely relied upon the oral evidence of the defendant. The finding of the learned court below is perverse. The



deed of agreement was executed in the proper manner and it was read over and explained to the executants, then he put his thumb impression after receiving Rs. 1,50,000/- by way of advance. The learned Sub-Judge has erroneously held that no consideration money was paid by way of advance after execution of the deed of agreement dated 16.06.1994. The learned court below has failed to consider that the thumb impression of the executant on deed of agreement was admitted by him. Learned court below has failed to appreciate that the appellant is ready and willing to perform his part of contract and defendant denied his part of contract to deprive the plaintiff from his legal right. Learned court below has wrongly held that the suit of the plaintiff is not maintainable in the eye of law. The learned court below ought to have held that the deed of agreement dated 16.06.1994 (Ext. 4) is genuine document. The learned court below has decided the issues in mechanical manner without applying judicial mind and as such the same is fit to be set aside. The learned counsel for the appellant arguing in this appeal has submitted that the learned court below has not appreciated the facts and laws involved in the suit properly and completely relied upon the oral evidence of the defendant, resulting, wrong finding.

9. No one has appeared on behalf of the respondent.



10. The only point for consideration in this appeal is as to whether the judgment and decree passed by the learned court below is fit to be sustained ?

FINDINGS:-

11. The plaintiff has examined 19 witnesses out of whom PW 1, PW 2, PW 3, PW 4, PW 6, PW 7, PW 10, PW 11, PW 12, PW 13, PW 14, PW 15, PW 16, PW 18 and PW 19 are formal witnesses. PW 5, PW 8, PW 9 and PW 18 the plaintiff himself are the witnesses on facts. Besides the oral evidence, Ext. 1 is legal notice dated 17.05.1995, Ext. 1/A is the carbon copy of legal notice, Ext. 2 to 2/F are the signatures on plaint, deed of agreement and legal notice. Ext. 3 is the list of filing photo copy. Ext. 4 is the original deed of agreement dated 16.06.1994, Ext. 5 is the envelope of legal notice and Ext. 5/A is the acknowledgment.

12. The defendant has examined altogether 21 witnesses, out of whom DW 1, DW 2, DW 3, DW 4, DW 5, DW 6, DW 7, DW 9, DW 11, DW 12, DW 13, DW 15, DW 16, DW 19 and DW 21 are formal witnesses and rest DW 8, DW 10, DW 14, DW 17, DW 18 and DW 20 the defendant himself are the witnesses on fact. Besides that Ext. A to A/2 are the signatures of Advocate on the petition filed under Order 11 rule 8 of the C.P.C. Ext. A/3 is the signature on sale deed dated 25.07.1990, Ext. A/4 is the signature



of the plaintiff on sale deed dated 11.11.1993, Ext. B is the petition filed under order 11 Rule 18 C.P.C. dated 12.07.1996, Ext. B/1 is the reply of the plaintiff dated 14.01.2000, Ext. B/2 is the reply of the plaintiff to the petition of the defendant dated 12.07.1996. Ext. C is the reply of legal notice dated 27.09.1995, Ext. C/1 is legal notice sent by defendant to the plaintiff dated 27.10.1995, Ext. C/2 is legal notice for original sale deed dated 11.11.1993. Ext. D is the rent receipts standing jointly in the name of Lakhan Singh, Mahadev Singh and Munilal Singh, Ext. E is the summon in the name of Janki Devi, Ext. F is the original sale deed dated 11.11.1993 (Munilal Singh Versus Janki Devi), Ext. F/1 is the certified copy of of sale deed dated 08.10.1990 (Rajeshwar Singh Vs. Sanjay Kumar Singh). Ext. F/2 is the certified copy of sale deed dated 08.10.1990 (Rajeshwar Singh Vs. Jitendra Kumar). Ext. G is the khatian and Ext. H is certified copy of deposition of Ram Lakhan Singh in Title Suit no. 20/48.

13. To consider the genuineness of deed of agreement dated 16.06.1994, it is important to deal the evidence of PW 17 the plaintiff himself. He has stated in paragraph 66 of his deposition that he has purchased the paper at the instruction of Munilal singh on 16.06.1994 at 11:00 a.m. and at that time PW 8 Dharmnath Singh, Rakesh Singh, Munilal Singh were also there. He has



further stated that he went with the defendant before Deed Writer at 11:00 a.m. whereas the Deed Writer PW 9 in paragraph 14 has stated that the plaintiff, defendants witnesses and identifier reached at his siristha at about 2-3 p.m. PW 17 in cross-examination in paragraph 81 has stated that the defendant Munilal Singh is handicapped with his both legs. PW 8 in paragraph 17 has stated that the defendant Munilal Singh and his wife are handicapped whereas the deed writer PW 9 has stated in paragraph 11 that the age of Munilal Singh at the time of drafting the deed of agreement was 65-70 years and in paragraph 12 he has stated that the defendant was fit and was not handicapped. PW 9 in paragraph 13 has stated that he has seen Munilal Singh after the execution of deed of agreement once or twice. This goes to prove that the defendant was not present at the time of execution of the deed of agreement on 16.06.1994 in the office of Deed Writer. PW 17 has stated that the deed of agreement was written at the instruction of Munilal Singh and as per his instruction, Deed Writer prepared the contents of the deed and then the Deed Writer read over and explained the contents to the defendant and then put his thumb impression on the deed of agreement. Whereas PW 8 in paragraph 16 has stated that the deed of agreement was written by the Deed Writer as per the talk between the Deed Writer and Rajeshwar



Singh. PW 8 in paragraph 11 has stated that the age of the Deed Writer is 70 years whereas the deed writer PW 9 has stated that his age is 30 years. PW 17 in paragraph 67 has stated that the Deed Writer after reading the contents of the deed read over and explained to the defendant witnesses and identifier whereas PW 8 in paragraph 24 has stated that he has got no knowledge about the contents of the deed of agreement and in paragraph 25 he has stated that the deed writer did not read over the contents of the deed of agreement. Thus, there are vital contradictions in the statement of Plaintiff's witnesses. PW 17 in paragraph 67 has stated that at the time of writing the deed of agreement, no advance was given but after the execution, the advance of Rs. 1,50,000/- was given in presence of the Deed Writer to the defendant but at that time there was no other witness. Further PW 17 has stated that he took Rs. 50,000/- from his Fufa Sitaram Bhagat and Rs. 50,000/- from his fufa Bindeshwar Bhagat and rest rupees was with him. No paper was prepared for giving cash. This witness has admitted in paragraph 71 that he has got account in Allahabad Bank at that time but he has given Rs. 50,000/- from his house and has not withdrawn the amount from the account. He cannot say as to what was the balance in 1993-94 in his account. In paragraph 76 he has admitted that he executed the sale deed on 25.07.1990 in



favour of Saroj Devi after receiving consideration amount of Rs. 30,000/- and purpose for selling the land was for legal necessity and to repair the house. In paragraph 77 he has stated that he and his brother executed the sale deed in favour of Sanjay Kumar on 09.10.1990 after taking Rs. 10,000/- and the purpose for selling the land was to meet legal necessity to pay the dues and repair the house. From Ext. F/2 it reveals that the plaintiff and his brother Uma Shankar Singh executed the sale deed on 08.10.1990 after receiving Rs. 10,000/- and purpose for selling the land to meet the other legal necessities, to pay the dues and to repair the house. From Ext. F it reveals that Munilal Singh executed the sale deed in favour of Masomat Janki Devi after receiving Rs. 25,000/- on 11.11.1993 and the thumb impression of Munilal Singh was taken in the same fashion on the deed of agreement as per the sale deed dated 11.11.1993, thus, the statement of the plaintiff that he paid Rs. 1,50,000/- as advance to the defendants is totally false and imaginary. The plaintiff has created the deed of agreement dated 16.06.1994 after bringing the Deed Writer in collusion and as such the deed of agreement dated 16.06.1994 (Ext. 4) is illegal, void and inoperative. The plaintiff cannot acquire any title and interest on the basis of that deed of agreement. The learned Sub-Judge has rightly decided the issue no. iv and v in favour of the defendant



and against the plaintiff. Further issue no. i and ii were also rightly decided in faovur of the defendant and against the plaintiff. Thus, I am of the affirmed view that the judgment and decree passed by the learned Sub-Judge is fit to be sustained and there is no need of any interference of this Court. In the result, this point is decided against the appellant and in favour of the respondent.

14. Accordingly, this appeal is hereby dismissed without cost.

(Jitendra Mohan Sharma, J)

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AFR/NAFR	NAFR
CAV DATE	13.11.2017
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