

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.95 of 2016

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1. Janak Dulari Devi, D/o Late Bindeshwari Prasad Singh, Wife of Kameshwar Chaudhary, Resident of Village-Elonch, P.O.-Bishambarpur, P.S.-Mushrigharari, District-Samastipur.
 2. Smt. Indu Devi, D/o Bindeshwari Prasad Singh, Wife of Sri Sudhist Narayan Thakur, Resident of Village-Sajadpur, P.O./P.S.-Sarayanranjan, District-Samastipur.

.... Petitioners.

Versus

1. Shiv Ratan Prasad, S/o Ramjatan ,Resident of Village-Basahi, P.S.-Tajpur, District-Samastipur.
 2. Rajendra Prasad Singh S/o Late Awadh Bihari Singh, Resident of Village-Khalilpur, P.S.-Sarayanranjan, District-Samastipur.
 3. Dev Narayan Paswan Son of Late Bharosi Paswan, Resident of Village-Basahi, P.O.-Basahi, P.S.-Tajpur, District-Samastipur. Opposite Parties.
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Appearance :

For the Petitioners : Mr. Rakesh Chandra, Adv.

For the Opposite Parties: Mr. D.K.Sinha, Sr.Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 12-04-2017

Heard Mr.Rakesh Chandra, learned counsel
appearing for the petitioners and Mr.D.K.Sinha, learned senior
counsel for the plaintiff-opposite party.

The present revision application has been filed
challenging the impugned order by which the learned court below has
rejected the petition filed on behalf of the defendant-petitioner for
rejection of plaint under Order 7 Rule 11 (d) C.P.C. The fact is not in
dispute that the plaintiff-opposite party has filed the T.S.No.286/2012
for declaration of possession as purchaser over the suit land and for a
decree for specific performance of contract against the defendant



nos.1 and 2. The plaintiff's claim is based upon the unregistered agreement for sale dated 17.03.2007 on the basis of which the plaintiff has also claimed to have possession over the suit land in part performance of the contract. The defendant-petitioners filed written statement and thereafter filed the petition under Order 7 Rule 11(d) C.P.C. on 12.04.2013 praying for rejection of the plaint. From the perusal of the said petition (Annexure-3), it transpires from paragraph-4 thereof that the plea of bar of the suit under the provision of amended Section 53(A) T.P.Act and 17(1-A) of the amended Registration Act was only raised. It is also evident that no plea with regard to the suit being barred by limitation has been raised on behalf of the defendant-petitioners.

The learned counsel for the petitioners has submitted that the learned court below has failed to exercise the jurisdiction vested in it in refusing to reject the plaint as prayed by the petitioners. By placing the provisions of Section 53A T.P.Act and the provisions of Section 17 Registration Act, the learned counsel for the petitioners has tried to persuade this Court to take the view that the suit was not maintainable on the basis of unregistered agreement for sale. The learned counsel for the petitioners though has accepted that no plea has been raised praying for rejection of plaint on the ground of the suit being barred by limitation but has submitted that in view of



the provision of Section 3 Limitation Act. It was incumbent upon the learned court below to consider the said aspect for the purpose of rejection of the plaint.

Mr.Sinha, learned senior counsel for the plaintiff-opposite party has supported the impugned order and has emphasized that as no plea of bar of the suit by limitation has been raised, the learned court below could not have rejected the plaint by exercising its powers under Section 3 of the Limitation Act.

After considering the submissions and perusal of the judgments of both the courts below including the impugned order, it is manifest that the plaintiff has filed the suit for declaration of possession as purchaser over the suit land and further for specific performance of contract for sale against the defendants. It is not in dispute that a suit for specific performance of contract can be maintained even on the basis of unregistered agreement or oral agreement for sale of immovable property. Moreover the provisions of Section 53A T.P.Act and Section 17(1-A) of the Registration Act do not bar the maintainability of a suit for specific performance of contract, which is evidently the main relief of the plaintiff in the suit. The learned court below has not committed any error of jurisdiction in rejecting the prayer as raised by the defendant-petitioner for rejection of the plaint on the said ground. So far as the submission with regard to the bar of the suit by limitation is



concerned, it is no more res integra that the question of limitation is always a mixed question of law and fact. Moreover, the petitioners have admittedly not made a prayer for rejection of plaint on the ground that the suit is barred by limitation and therefore no fault can be found in the impugned order for coming to the conclusion that the learned court below has committed error of jurisdiction.

For the aforesaid reasons and discussions, this Court does not find any merit in this revision application, which is, accordingly, dismissed.

(V. Nath, J)

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