

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.7 of 2009

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1. Most.Ambika Devi, Wife of Late Gauri Shankar Jha.
 2. Rabindra Mohan Jha, Son of Late Gauri Shankar Jha.
Both resident of Village-Mauza-Maruar Pargana-Bhaur, P.S.- Bhairav Asthan, District-Madhubani.
 3. Smt. Puspa Rai, Wife of Raman Kumar Rai, Mauza Village-Kumhroul, District-Darbhanga.
 4. Smt. Neelam Jha Wife of Sunil Kumar Jha, Resident of Village-Parjail, P.S.- Benipatti, District-Madhubani.

.... Plaintiffs/ Appellants

Versus

1. Smt.Sushila Devi.
2. Smt. Tara Devi.
Both daughter of late Surya Kant Jha, Resident of Mauza-Maruar , Pargana-Bhaur, P.O.and P.S.-Bhairav Asthan, District-Madhubani.
.... Defendants/ Respondents 1st Set.
3. Most Rajeshwar Ojhain Wife of Late Madhu Kant Jha.
4. Most Kamna Devi Wife of Late Dina Nath Jha.
(A) Raju Jha.
(B) Sanju Jha.
Both sons of Late Dina Nath Jha.
(C) Smt. Guddi Devi Wife of Shailendra Kumar Mishra.
All resident of village-Harina, P.O.-Harina, P.S.-Andrathari, District-Madhubani.
(D) Smt.Rubi Devi Wife of Sohan Kumar Jha, Resident of Village-Kaithinia, P.O.-Kaithinia, P.S.-Shivir Jhanjharpur, District-Madhubani.
Defendants/Respondents 2nd Party.

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Appearance :

For the Appellant/s : Mr. Subodh Kant Jha, Adv.
Mr.Sarveshwar Tiwary, Adv.
Mr.Pranav Kumar Jha, Adv.
Mr.Jagat Narayan Singh, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 19-07-2017

Heard Mr.Jha, learned counsel
appearing for the appellants.

The plaintiffs are the appellants in this



appeal against the judgment and decree of affirmance dismissing the suit.

The plaintiffs filed the suit for specific performance of contract against the defendant and prayed for a decree for directing the defendant to execute the sale deed in pursuance to the agreement for sale (Mahadnama) dated 11.07.1986. The defendant appeared in the suit, filed written statement denying the assertions of the plaintiff but thereafter left the pairvi in the suit and also died during the pendency of the suit. The substituted heir of the defendant also did not contest the same. However, both the courts below on examination of the pleadings and materials on record as well as the evidence adduced on behalf of the plaintiffs, have come to the concurrent finding that the plaintiffs have failed to establish their readiness and willingness to perform their part of the contract as required in Section 16(c) of the Specific Relief Act. It has also been found by the learned court below that the plaintiffs have failed to prove by cogent evidence the genuineness of the agreement for sale.

Mr.Jha has forcefully argued that both



the courts below have taken too technical views in the matter and have failed to give due liberty after taking notice of the fact that the pleadings on behalf of the plaintiffs were from the Muffasil courts. It has been further contended that both the courts below have recorded their findings ignoring the material evidence on record and therefore, the findings are vulnerable. Learned counsel has placed the findings by the appellate court below in order to substantiate his contentions. Learned counsel for the appellants has argued that in view of the provision of Section 137 of the Evidence Act, the deposition of the witnesses of the plaintiff who have not been cross examined must be accepted to have been admitted.

After considering the submissions and the perusal of the impugned judgment of both the courts below, it is limpid that in a suit for specific performance of contract for sale of immovable property, the plaintiff is required to establish his readiness and willingness to perform his part of the contract. In the present case, accepting the case of the plaintiffs that he was ready to pay Rs. 5,000/- to the defendant on the date of filing of



the suit is difficult to accept in view of the own stand of the plaintiff before the court below that he had no money to pay the court fee as his annual income was below Rs.3500/-. This Court does not find that the learned courts below have committed error in coming to the conclusion that the plaintiff was not ready and willing to pay Rs.5,000/-in part performance of the contract on the date of the institution of the suit. Besides, the appellate court below has taken into notice the specific stand on behalf of the plaintiff that no finger print expert was required to be appointed for examination of the L.T.I. of the defendant as appearing on the said Mahadanama. The appellate court below has rightly observed that even when the proceeding of the suit was ex parte, the plaintiff was not exonerated from establishing his case by leading cogent evidence. This view is in accordance with the dictum of the apex court in the case of **Ramesh Chand Ardawatia Vs. Anil Panjwani, (2003) 7 SCC 350** which also answers the submission on behalf of the appellants on the basis of Section 137 Evidence Act. This Court thus comes to the conclusion that the finding by both the courts below does not suffer from the perversity



or unreasonableness. The appellate court below has further exercised its discretion under Section 20 of the Specific Relief Act in not granting the relief as prayed by the plaintiff. The reasons assigned by the learned court below cannot be shown or established to be arbitrary or dehors the settled principles of law.

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

(V. Nath, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.08.2017
Transmission Date	

