

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.51 of 2013

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Ram Nath Singh S/O Late Sia Sharan Singh Resident Of Kamangar Gali, P.S- Chowk, Patnacity, District- Patna.

.... Appellant

Versus

1. Anant Kumar Jain S/O Shyam Sunder Sarawagi Resident Of Mohalla- Kathantiya Gali, P.S- Chowk, Patnacity, District- Patna.
2. Sumat Kumar S/O Shyam Sunder Sarawagi Resident Of Kathautiya Gali, P.S- Chowk, Patna City, Distt- Patna.
3. Sidarth Kumar S/O Sri Sumat Kumar Resident Of Kathautiya Gali, P.S- Chowk, Patna City, Distt- Patna.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Pankjesh Sharma, Adv.

Mr. Deepak Kumar, Adv.

For the Respondent/s : Mr. P.C. Agrawal, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 25-04-2017

Heard the learned counsel for the appellant.

The plaintiff is the appellant in this appeal against the judgment and decree of reversal by the appellate court below partly modifying the decree passed by the trial court to the extent of granting the alternative relief to the plaintiff alongwith compensation by awarding the amount of Rs.50,000/- besides interest on the amount which has been paid by the plaintiff to the defendant no.1 by way of advance.

The plaintiff filed the suit for specific performance of contract against the defendant no.1. The defendant



no.2, impleaded in the suit, is son of defendant no.1. During the pendency of the suit, however, the brother of the defendant no.1 filed the petition to be impleaded as intervenor defendants which was allowed and he was added as defendant no.3 in the suit. It does not appear that the plaintiff assailed the said impleadment of defendant no.3 at any point of time later on.

After considering the submissions and the evidence on record, the trial court granted the decree to the plaintiff as prayed and directed execution of the sale deed by the defendant no.1 after taking the balance consideration money. The defendant no.3 alone filed the appeal against the said judgment and decree. It again does not appear that any objection was raised by the plaintiff at the appellate stage regarding the maintainability of the appeal against the judgment and decree which was not against the defendant no.3. The appellate court below by the impugned judgment and decree, however, has granted the alternative relief to the plaintiff by awarding the compensation as well as the interest on the amount already paid by the plaintiff to the defendant no.1.

After considering the submissions and the perusal of the judgments of both the courts below, it is demonstrably clear that the judgment and decree passed by the appellate court below is under the provision of Section 20 of the Specific Relief Act. The



learned counsel for the appellant has tried to persuade this Court that there was partition between the parties and the appellate court below has wrongly come to the conclusion that there was no partition of the suit land and it was joint between the defendants. However the finding of fact in this regard has been recorded by the appellate court below on the basis of evidence which were acceptable and could have been relied upon.

The appellate court below after considering the entire facts and circumstances has come to the conclusion that the grant of the relief of specific performance of contract to the plaintiff would result in hardship to the defendants. The discretion exercised by the court below is besides others, primarily based upon the fact that the suit property is part of residential house of the defendants where they actually reside and it has admittedly one exit door.

The provision as enshrined in Section 20 of the Specific Relief Act is clear in this regard that even if the plaintiff is entitled to a decree for specific performance of contract, the court may, in the facts and circumstances of the case, decline to grant such a decree. In ***Bishwanath Prasad Vs. Bhagwat Pandey, A.I.R. 1982 Patna 219***, it has been observed that the grant of this relief is discretion of the court and cannot be claimed as a matter of right.

During the course of submission on behalf of



the appellant, this Court has not been persuaded to find illegality or unreasonableness in the impugned judgment and decree by which the plaintiff-appellant has been granted the alternative relief as prayed, alongwith compensation and interest.

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)

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