

IN THE HIGH COURT OF JUDICATURE AT PATNA
First Appeal No.218 of 2003

-
-
1. Bashishtha Singh son of Late Harihar Singh
 2. (a) Laxmi Devi wife of Late Sudrsan Singh
(b) Santosh Kumar son of Late Sudarshan Singh
(c) Pankaj Kumar son of Late Sudarshan Singh
(d) Sabita Devi daughter of Late Sudarshan Singh
(e) Sarita Devi daughter of Late Sudarshan Singh
 3. Shiwparsan Singh son of Late Harihar Singh
 4. Shiv Shankar Singh son of Late Harihar Singh
 5. Ramayan Singh, son of Chandra Shekhar Singh
all R/o village- Kohari, P.S.- Bhabhua, District- Kaimur

... .. Appellants

Versus

1. Rajiv Ranjan Trivedi son of Late Rarkeshwar Tiwary
2. (a) Most. Anita wife of Late Lokesh Trivedi
(b) Om Trivedi minor son of late Lokesh Trivedi
all R/o village- Muthani, P.O. Muthani, P.S.- Mohania, District- Kaimur

... .. Respondents

Appearance :

For the Appellants	:	Mr. Ganpati Trivedi, Sr. Advocate Mr. Chakrabarti Singh, Advocate
For the Respondents	:	Mr. T. N. Maitin, Sr. Advocate Mr. Ashok Kumar Garg, Advocate

CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

C.A.V. JUDGMENT

Date : 16-01-2018

The instant appeal is directed against the judgment and decree dated 29.07.2003 and 05.08.2003 respectively, passed by Shri Shyam Kishore Sah, Sub-Judge Ist, Kaimur at Bhabhua in Title Suit No. 226 of 2000 whereby and whereunder the suit was dismissed on contest but without cost. The plaintiffs are the appellants and the defendants are the respondents in this appeal.

2. The aforesaid Title Suit was filed for part performance of contract for sale with a prayer that the defendants be directed to



execute registered sale deed in favour of the plaintiffs with respect to the land detailed in schedule 'ka' of the plaint within stipulated period and if the defendants failed to comply the order, in that event, the order may be passed under Order 21 Rule 34 of the C.P.C. Further if the plaintiffs are not entitled to get the aforesaid relief, in that event, the amount of Rs. 2,35,000/- with interest at the rate of 12 % per annum thereon be ordered to be paid to the plaintiffs by the defendants and also the cost of the suit.

3. The case of the plaintiffs, briefly stated, is that the defendants expressed their desire for sale of the land area 4.01 acres which was ultimately agreed to be sold with the plaintiffs for a sum of Rs. 3,35,000/-. The entire consideration amount of Rs. 3,35,000/- was paid to the defendant no. 1, namely, Shri Rajiv Ranjan Trivedi through four bank drafts example Rs. 1,00,000/- through draft dated 16.04.1998, Rs. 85,000/- through draft dated 07.08.1998, Rs.1,00,000/- through draft dated 08.07.1999 and Rs. 50,000/- through draft dated 20.07.1999. The draft dated 16.04.1998 and 07.08.1999 received by defendant no. 1 namely, Rajiv Ranjan Trivedi on 19.04.1998 and 07.08.1998 respectively whereas draft dated 08.07.1999 and 20.07.1999 were received by defendant no. 2 namely, Lokesh Trivedi the son of defendant no. 1 on 09.07.1999 and 25.07.1999 respectively.



4. Further, the case of the plaintiffs is that out of the agreed area of land i.e. 4.01 acres, the defendant no. 1 Rajiv Ranjan Trivedi executed the sale deeds dated 25.10.1999 for an area of 1.23 acres land for consideration of Rs. 1,00,000/- paid to defendant no. 1 namely, Rajiv Ranjan Trivedi through draft dated 08.07.1999 and put them in possession over the entire agreed area of sale i.e. 4.01 acres as purchasers. Out of the said 4.01 acres of land, under contract for sale, 2.78 acres land on consideration money of Rs. 2,35,000/- remained to be executed, more so, when the defendants had put the plaintiffs in possession over the said area. The plaintiffs requested the defendant no. 1 for execution of the sale deed for an area of 2.78 acres for balance consideration money of Rs. 2,35,000/-, already paid to him, whereupon the defendant no. 1 agreed to execute the sale deed on 15.03.2000 but he failed to obey by the promise. The plaintiffs repeatedly requested the defendants for execution of the sale deeds for an area of 2.78 acres of land for which the entire consideration money has already been paid but the defendants put off the issue on one ground or the other and then, the plaintiffs sent legal notice on 30.06.2000 for executing the sale deeds in their favour but in spite of receipt of notice, defendants did not agree to execute the sale deed.



5. The defendants want to grab Rs.2,35,000/-. The plaintiffs had already performed their part obligation for the contract by paying the amount whereas the defendants have been avoiding their part of obligation for completion of contract. The suit land is situated at village Kohari which is native place of the plaintiffs and the same is cultivable land according to the suitability of the plaintiff and as such the plaintiffs arranged the money for the same and paid the same to the defendants through drafts. The defendants having received the money handed over the possession of the land to the plaintiffs but they avoided to execute the sale deed. The defendants finally refused to execute the sale deed on 25.07.2000 giving rise to the cause of action of the instant suit.

6. The plaintiffs have given the details of 2.78 acres of land in schedule 'ka' of the plaint, out of the total area of 4.01 acres of land agreed to be sold as 1.23 acres of the agreed area of land had already been sold in favour of the plaintiffs.

7. The defendants have appeared in the court and filed their written statement. Apart from the ornamental grounds, they admitted the oral agreement for sale of the land with the plaintiffs for consideration of Rs. 3,35,000/- but for an area of only 1.23 acres stating the same to be its actual price. They denied the agreement for an area of 4.01 acres and stated that only for an area



of 1.23 acres which had defendants agreed to sale, they had already executed the sale deeds in favour of the plaintiffs. They denied the agreement to sale for schedule ka land. They also denied that the plaintiff were ever put in possession over the schedule 'ka' land and stated that the plaintiffs have no concern with that land. They further stated that the plaintiffs proposed that they would mention the price of the land as per the circle rate fixed by the Government and would not mention the entire consideration money of Rs. 3,35,000/- because it would cost them higher stamp fee and court fee and they may be involved in income tax. They further stated that at the request of the plaintiffs they executed the sale deeds with respect to the land which they had agreed and there was no any due towards the consideration money with respect to 2.78 acres of land as there was no agreement for sale thereof.

8. Further the case of the defendants is that the plaintiffs never made any request for sale nor any notice was given to them and if any notice was purportedly given to them, the plaintiffs forged the receipts thereof. They further denied to have any obligation for performing the alleged part of contract as they had never agreed to sale the same. By way of amendment, the defendants have introduced the statements that the schedule 'ka'



properties was *Istridhan* property of Gyatri Devi to which after her death has been succeeded by her legal heirs namely, three sons and four daughters who are in possession of the schedule 'ka' properties. It is also not at all a fact that the defendants had been facing cultivation problem in village Kohari and, as such, they had intended to sale the suit land rather they had been cultivating the land smoothly but the grounds stated above, it has been prayed that the suit be dismissed with cost.

9. On the basis of the pleadings of the parties, learned court below framed the following issues :-

- (i) Is the suit as framed maintainable ?
- (ii) Is the suit hit by doctrine of estoppel, waiver and acquiescence ?
- (iii) Have the plaintiffs valid cause of action for the suit ?
- (iv) Is the suit bad for non-joinder of parties ?
- (v) Are the plaintiffs entitled to get a decree for part performance of sale with respect to schedule 'ka' land of the plaintiff?
- (vi) Are the plaintiffs entitled to alternative relief for the refund of Rs. 2,35,000/- at interest of 12 % per annum from the defendants till full recovery of the same ?
- (vii) To what relief or other reliefs the plaintiffs are entitled ?



10. The learned trial court took up the issue no. (v) at first and came to the conclusion that the plaintiffs are not entitled to get a decree for part performance of sale with respect to schedule 'ka' land of the plaint and accordingly, decided the said issue against the plaintiffs and in favour of the defendants. Thereafter, issue no. (vi) was taken and that was also decided against the plaintiffs and in favour of the defendants. Issue no. (ii) and (iv) have not been pressed at the time of argument. Issue No. (viii) was decided holding that the suit is maintainable but the plaintiffs are not entitled to get any relief. Issue no. (iii) was also decided against the plaintiffs and in favour of the defendants holding that the plaintiffs have got no valid cause of action for the suit. Issue no. (vii) was also decided against the plaintiffs and it was held that the plaintiffs are not entitled to get any relief or reliefs and accordingly, the suit was dismissed on contest but without cost.

11. The appellants being aggrieved and dissatisfied with the judgment and decree have preferred this appeal challenging the maintainability of the impugned judgment and decree on the ground that the learned court below has erred in law in dismissing the suit when admittedly, there was an agreement to sell the land and consideration money has already been received. The learned court below failed to consider that the entire consideration money



of Rs. 3,35,000/- has already been paid to the defendants through bank drafts which is admitted one. The learned court below failed to consider the evidences available on the record properly and only on the basis of imagination held the issues otherwise. The defendants have not denied regarding the payment of consideration money and further regarding agreement to sale. The learned court below has failed to consider that the defendants agreed to sale the land having an area of 4.01 acres and out of that, sale deeds were executed on 25.10.1999 for an area of 1.23 acres only. The plaintiffs have specifically pleaded in the plaint that the defendants had executed the sale deeds only with regard to land having an area of 1.23 acres but did not execute the sale deeds regarding rest area of 2.78 acres for which the defendants have already received Rs. 2,35,000/- and in schedule 'ka' of the plaint the description of 2.78 acres of land has been given. The learned court below misinterpreted the description given in schedule 'ka' of the plaint. The schedule has to be read along with the statement made in the plaint along with schedule 'ka' of the plaint. The learned court below erred in law in not considering that PW 8 in oral evidence has stated that the defendants had agreed to sale the land 4.01 acres to the plaintiffs on consideration money of Rs. 3,35,000/- out of which defendants executed sale deeds with respect to 1.23 acres



of land which is in confirmity with the statement made in the plaint. The learned court below erred in law in not relying upon the statements made by PW 8 which is in confirmity with the pleadings. Learned court below erred in law in holding that the plaintiffs failed to prove the case for decree of part performance. The learned court below has failed to consider the evidences of plaintiffs in right perspective as all the PWs are independent witnesses and they have proved the pleadings of the plaintiffs whereas the oral evidences adduced by the defendants are of concocted and have no force and should have been disbelieved.

12. On the other hand, on behalf of the respondents, it has been argued that the suit has been rightly dismissed. The plaintiffs have agreed to purchase an area of 1.23 acres only for consideration amount of Rs. 3,35,000/- but to save the stamp duty and court fee and further to save the skin from income tax the plaintiffs got mention the consideration amount of Rs. 1,00,000/- only in the sale deeds dated 25.10.1999. The market value of 1.23 acres of land at the relevant time was Rs. 3,35,000/- and not Rs. 1,00,000/- only. The evidences adduced on behalf of the defendants clearly prove the same whereas the pleadings of the plaintiffs is vague. In schedule 'ka' of the plaint the description of 4.01 acres of land has not been given. In the plaint it has not been



stated that what was the time fixed for payment of consideration money and within what time sale deed has to be executed. The plaintiffs have also not stated that in whose presence there was oral agreement of sale of 4.01 acres of the land, so the entire alleged contract is uncertain and vague. The plaintiffs have miserably failed to plead and prove their case. The burden of proof never shifts, so burden was on the plaintiffs to prove their case by pleading and leading the evidence. The plaintiffs have not explained as to why they have purchased the stamp of Rs. 1,00,000/- only when he had to purchase stamp of entire consideration money of Rs. 3,35,000/-, further the plaintiffs have failed to explain as to why they got sale deed executed for 1.23 acres of land when they had already paid the entire consideration money in four installments. Learned court below has considered these facts and has come to the right conclusion. The suit has been filed by five persons and in the plaint it has been stated that there was an agreement to sale with all the plaintiffs but in the plaint it has not been stated that plaintiff no. 1 was Karta of the family, so no decree can be passed in favour of the plaintiffs when only one plaintiff was examined in the case. In the present case the plaintiffs have miserably failed to plead and prove the details of the land for which there was an agreement to sale, apart from the facts that



plaintiffs did not approach the court with clean hands. Further the plaintiffs cannot take advantage of any deficiency in the case of the defendants, the plaintiffs have to stand on their own legs and as such the suit of the plaintiffs was rightly dismissed.

13. The defendants have clearly proved the facts that there was an oral agreement to sale of 1.23 acres of land for consideration money of Rs. 3,35,000/- but on request of plaintiffs, in the sale deed valuation was given of less value further it is never the case of the defendants that at any point of time there was any oral agreement with the plaintiffs to sale of 4.01 acres of land, there is nothing to show an agreement as stated by the plaintiffs and agreement as stated by the defendants were entered on a particular date. There is common in the two agreements except consideration amount. The defendants witnesses are reliable and they have rightly said that the defendants are in possession of the schedule 'ka' land. The plaintiffs have not produced any paper to show that they are in possession of the schedule 'ka' land. Further the plaintiffs filed a petition under order 39 Rule 1 and 2 of the C.P.C. in the trial court to restrain the defendants from interfering with the possession but the learned trial court vide order dated 03.09.2001 rejected their prayer and said order has not been challenged by the plaintiffs before any superior court till today and



this goes to show that the defendants are in possession of the schedule 'ka' land. Thus, this appeal is devoid of merit and is fit to be dismissed.

14. In this appeal the points for consideration are as follows:-

(i) Whether the appellants are entitled to get a decree for part performance of sale with respect to the schedule 'ka' land of the plaint ?

(ii) Whether there was an agreement to sale of 4.01 acres of land for a consideration of Rs. 3,35,000/- or whether the agreement was only for 1.23 acres of land ?

(iii) Whether the valuation of the land of area 1.23 acres which was executed under two registered sale deeds dated 25.10.1999 was Rs. 3,35,000/- and to save the stamp duty, court fee and also income tax, the plaintiffs got mentioned the valuation only Rs. 1,00,000/- ?

(iv) Whether the plaintiffs are entitled to an alternative relief for the refund of Rs. 2,35,000/- with interest of 12 % per annum from the defendants till full recovery of the same ?

(v) Whether the judgment and decree passed by the learned court below is fit to be maintained ?

FINDINGS:



15. The plaintiffs to prove their case have examined altogether 12 witnesses in this case. PW 1 is Shiwchan Ram, PW 2 is Riyajuddin Ansari, PW 3 is Narayan Sah, PW 4 is Abdul Majid Ansari, PW 5 is Mahendra Singh, PW 6 is Munna Upadhayay, PW 7 is Awadhesh Singh, PW 8 is Bashishtha Singh, PW 9 is Ram Kumar Ram, PW 10 is Hare Ram Verma, PW 11 is Amarnath Singh and PW 12 is Ram Kumar Prasad. Besides the oral evidence the plaintiffs have also adduced documentary evidences. Ext. 1 is legal notice, Ext. 2 is Vakalatnama, Ext. 3 is Registry receipt, Ext. 4 is Sale Deed No. 8488 dated 07.06.2002 executed by Smt. Saroj Devi, in favour of Shiw Kumar Bind, Ext. 4/A is sale deed no. 5672 dated 07.06.2000 executed by Bachau Upadhayay in favour of Smt. Suktha Devi, Ext. 4/B is sale deed no. 4646 dated 28.05.1996 executed by defendant no. 1 in favour of Raj Pati Devi, Ext. 4/C is sale deed no. 1420 dated 10.03.1999 executed by Babu Lal in favour of Smt. Buchi Devi, Ext. 4/D is sale deed no. 4647 executed by defendant no. 1 in favour of Paudhari Kunwar, Ext. 4/E is sale deed dated 25.10.1999 executed by defendant no. 1 in favour of Chandrashekhar Singh and Bashishtha Singh, Ext.5 is the map.

16. On behalf of defendants 9 witnesses have been examined. DW 1 is Sheomurat Ram, DW 2 is Musafir Ram, DW 3



is Arun Kumar Upadhayay, DW 4 is Jamuna Ram, DW 5 is Krishna Kumar Upadhayay, DW 6 is Ram Nagina Tiwary, DW 7 is Rajesh Kumar Singh, DW 8 is Muchun Prasad Srivastava and DW 9 is Rajeev Ranjan Trivedi, defendant no. 1 himself. Besides oral evidence the defendants have adduced documentary evidences also. Ext. A is sale deed no. 1467 dated 12.03.1999 executed by Dulari Devi in favour of Harihar Singh the father of the plaintiffs, Ext. A/1 is the sale deed no. 10570 dated 01.10.1993 executed by Ranjeet Upadhayay in favour of Dashrath Singh, Ext. A/2 is sale deed no. 10571 dated 01.10.1993 executed by Ranjeet Upadhayay in favour of Dashrath Singh, Ext. A/3 is sale deed no. 282 dated 09.01.2001 executed by defendant no. 1 in favour of Ashok Singh and Vinod Singh, Ext. A/4 is sale deed no. 282 dated 09.01.2001 executed by defendant no. 1 in favour of Hans Lal Singh, Ext. A/5 is sale deed no. 118 dated 05.01.2001 executed by defendant no. 1 in favour of Ramesh Prasad Singh, Ext. A/6 is sale deed no. 10714 dated 08.10.2001 executed by Masomat Chameli Kunwar in favour of Bir Bahadur Upadhayay, Ext. A/7 is sale deed no. 10713 dated 08.10.2001 executed by Chemala Kunwar in favour of Ramesh Upadhayay, Ext. A/8 is sale deed no. 119 dated 05.01.2001 executed by defendant no. 1 in favour of Rajesh Prasad Singh. Ext. A/9 is sale deed no. 279 dated 09.01.2001 executed by



defendant no. 1 in favour of Jodhan Singh, Ext. B is Khatiyani and Ext. C is Map.

17. Points No. (i) & (ii) :- The case of the plaintiffs is that the defendants intended to sale 4.01 acres of land and the plaintiffs agreed to purchase the same on consideration money of Rs. 3,35,000/- to which the defendants also agreed whereas the case of the defendants is that the parties had entered into an oral agreement to purchase and sale the land on consideration money of Rs. 3,35,000/- for an area of 1 acre and 23 decimals only and not for 4.01 acres. The plaintiffs have sought relief for part performance of contract on the ground that the plaintiffs had executed two sale deeds with respect to 1.23 acres of land on consideration amount of Rs. 1,00,000/- and as such the defendants may be directed to execute the sale deed with respect to the land detailed in schedule 'ka' of the plaint i.e. area 2.78 acres for balance consideration amount of Rs. 2,35,000/- which has already been paid. It is an admitted fact that the plaintiffs have paid amount of Rs. 3,35,000/- through bank drafts as the four bank drafts are not at all in dispute and as such the amount paid by the plaintiffs and received by the defendants requires no further consideration. There is no written agreement and as such oral evidence as well as documentary evidences adduced on behalf of



the parties are for consideration for proper adjudication of the case. Most of the exhibits which are the sale deeds adduced on behalf of the parties are on the point of valuation of the suit land. PW 1 in paragraph 2, PW 5 in paragraph 2 have stated that 4.01 acres of land was to be sold by the defendants to the plaintiffs on consideration money of Rs. 3,35,000/-. PW 2 in paragraph 1 and PW 3 in paragraph 1 have stated that 16 Bighas Kachha land was under oral agreement on consideration money of Rs. 3,35,000/-. PW 6 has come to say regarding description of the suit land. The learned court below after considering the plaint has come to the conclusion that in schedule 'ka' of the plaint area is only 2.76 acres and there is no description of 4.01 acres of land and as such area of 4.01 acres of land, as claimed by the plaintiffs becomes, itself beyond the pleading. PW 8 has stated that the defendants had agreed to sale 4.01 acres of land to the plaintiffs on consideration money of Rs. 3,35,000/- out of which the defendants executed the sale deed with respect to 1.23 acres only and for rest land of 2.78 acres, the defendants did not execute the sale deed. In this appeal vide order dated 24.03.2017 the amendment in schedule 'ka' of the plaint was allowed as area of plot no. 171 was 24 decimals which was amended as 26 decimals and the said order has never been challenged by the defendants respondents. Amendment once



corporated relates back to the date of the suit on the doctrine of relation back and as such the suit would be deemed to have been filed as amended schedule of the plaint originally and the evidence of PW 8 is consistent with the pleadings. The Apex Court in the case of **Siddalingumma Vs. Mamtha Shenoy** reported in **(2001) 8 SCC 561** (at page 566 in paragraph 10) has held accordingly. The same view has been reiterated by the Apex Court in the case of **Sampath Kumar Vs. Ayyakannu** reported in **(2002) 7 SCC page 559** (at page 563 in paragraph 10). In paragraph 1 of the plaint the plaintiffs have referred the area of agreement as 4.01 acres land for a consideration of Rs. 3,35,000/-, in paragraph 4 of the plaint it has been stated that out of the proposed area measuring 4.01 acres, 1.23 acres has been executed under registered sale deeds dated 25.10.1999 for a consideration of Rs. 1,00,000/-. In paragraph 5 of the plaint it has been specifically pleaded by the plaintiffs that out of total agreed area for sale 2.78 acres remained due to be executed for the balance consideration money of Rs. 2,35,000/-. In schedule 'ka' of the plaint the balance area measuring 2.78 acres of land, which remained to be executed, has been mentioned giving specifically khata number and plot number as well as the respective areas of the plots. Admittedly, the defendants have executed two sale deeds transferring 1.23 acres of



land in favour of the plaintiffs for a consideration amount of Rs. 1,00,000/- only but specifically admitted that there had been agreement for sale of 1.23 acres of land and accordingly, sale deeds were executed in favour of the plaintiffs and in the name of their wives. One sale deed no. 11277 was executed by defendant no. 1 in favour of the wives of the plaintiffs for a consideration of Rs. 50,000/- with respect to 59 decimals of land and the nature of land was agricultural two *fasala*. Another sale deed was executed by defendant no. 1 in favour of plaintiffs with respect to 64 decimals of land and nature of land was agricultural two *fasala*. Schedule 'ka' of the plaint mentioned the rest of the area under agreement according to the plaintiffs and adding both the area it comes to 4.01 acres of land. Thus, the details of area of 4.01 acres which was area under agreement, according to the plaintiffs, was specific before the learned trial court. In the present case oral agreement with respect to land between the plaintiffs and defendants is admitted. Situs of the land is also admitted because the sale deeds with respect to 1.23 acres had already been executed, the consideration money of the sale of the agreement is also admitted which had admittedly paid under the four bank drafts as mentioned in paragraphs 2 and 3 of the plaint, hence, the trial court erred in holding that the plaintiffs have not pleaded about the



area of the agreement. The Apex Court has been pleased to hold that a pleading is not an expression of art and science but an expression through words to place the facts and law of one's case before the court in order to obtain the relief. Further it has been held that wherever there are two possible interpretation, the one sub serves the ends of justice should be accepted and one defeat justice should be rejected. Reliance can be placed in the case of **Syed Dastagir vs. T.R. Gopala Krishna Setty** reported in (1999) 6 SCC 337 (paragraph 9 7th line from top). Similar view has been expressed by the Apex Court in the case of **Sopan Sukhdeo Sabul Vs. Assistant Charity Commissioner** reported in (2004) 3 SC page 137 (at 146 paragraph 15).

18. As has already been mentioned above, PW 1 in paragraph 2 has stated that an agreement was with respect to 4.01 acres of land for Rs. 3,35,000/, PW 2 in paragraph 1 has sated that agreement for sale between the plaintiffs and defendants had been made with respect to 16 Bighas Kachha land and out of 16 Bighas for 5 Bigha kachha land sale deed had already been executed and rest 11 Bigha kachha land remained to be executed but possession thereon was given by the defendants. PW 3 in paragraph 1 of his deposition stated that the defendants agreed to sale 16 Bighas kachha land for Rs. 3,35,000/- and have taken the entire



consideration money through drafts. He further stated that dispute is with respect to 11 Bigha Kachha land. PW 4 in paragraph 1 has stated that the defendants have agreed to sale 16 Bigha land for a sum of Rs. 3,35,000/-. In paragraph 2 he has stated that out of 16 Bigha, sale deeds with respect to 5 Bigha of land has already been executed and and sale deed with respect to 11 Bigha of land remained to be executed. He has further stated that entire consideration amount has been paid by the plaintiffs to the defendants. He has further stated that agreement to sale was entered after *Holi* in the year 1998 which is approximate to first payment of drafts after 16.04.1998 amounting to Rs. 1,00,000/-. PW 8 is the plaintiff no. 1 himself. He in paragraph 1 of his deposition has categorically stated that he has entered into an agreement for purchase of 4.01 acres of land for a consideration of Rs. 3,35,000/- out of which sale deed for 1.23 acres has already been executed by the defendants but possession was given over the entire 4.01 acres of land. He has further stated that he has always been ready for getting the sale deed executed for rest of the lands measuring an area of 2.78 acres when defendants evaded to execute the sale deed for rest of the land then notice was given which was not replied. In paragraph 10 of his cross-examination



he has categorically denied the suggestion that an agreement was only for 1.23 acres of land.

19. DW 9 is the defendant no. 9 himself. He in paragraph 1 of his evidence has admitted about talk of agreement for sale with the plaintiff no. 1 about 5-7 years ago i.e. in the year 1998 for a consideration amount of Rs. 3,35,000/- but for the area of 1.23 acres of land. In paragraph 3 of his deposition he has stated that he had executed two sale deeds in favour of plaintiffs for a consideration of Rs. 50,000/- each though in paragraph 5 of his deposition he has stated that value of the land during relevant period was Rs. 70-80 thousand per Bigha Kachha but in cross-examination in paragraph 9 of his deposition he has admitted that he had sold lands in the year 2001-02 at the rate of more than Rs. 70-80 thousand per acres. In paragraph 8 of his cross-examination he has stated that the plaintiffs had got the sale deed executed at the circle rate fixed by the government. He further stated that the circle rate of land of Mauza Kohari during relevant time was Rs. 50,000/- per acre. So far as the documentary evidence filed on behalf of plaintiffs regarding the area of land agreed to be sold, the plaintiffs have filed legal notice, Ext. 1, and registration receipt there for, Ext. 3, in support of the fact that there was an agreement for sale with the defendants with respect to 4.01 acres of land for a



consideration of Rs. 3,35,000/- and the payment was made through four demand drafts which was dully received by the defendants. Out of 4.01 acres, 1.23 acres of land has already been transferred and the rest area measuring 2.78 acres was to be transferred by the defendants. The details of said 2.78 acres was also mentioned therein. Ext. 3 is the registration receipt which has been filed in support of the fact that the said notice was sent under registered process to the defendants. The defendants in paragraph 11 of the written statement have stated that the plaintiffs did not give any notice and if any notice has been given the receipt thereof has been forged with the purpose to prove the fact that notice has been given. The issue of notice has been proved by examining PW 7 namely, Awadesh Singh, the advocate clerk, who has proved the notice Ext. 1 and the signature of the Advocate thereon as Ext. 2. It is well settled that if a letter has been properly addressed and sent under registered post, then, it would be presumed that it had reached its destination. Defendants have not denied receipt of the notice, on the contrary the defendants have stated that receipt obtained by plaintiffs is forged. Registration receipt is a public document said to have been prepared in due course of official duty and has got presumption of correctness under Section 114 (E) of the Evidence Act. Even under Section 27 of the Bihar and Orissa



General Clauses Act such presumption arose with regard to registered letters. Reliance can be placed upon the ruling reported in **1918 Privy Council Page 102** in the matter of **Harihar Banergee Vs. Ramashray Rao**. The same view has been reported in the case of **Dineshwar Prasad Singh Vs. Smt. Manorma Devi** reported in **1978 PLJR 634 (DB)**. The defendants have not produced any document to rebut its presumption and simply denied registration receipt as a forged document for which onus heavily lies upon the defendants which they have failed to discharge.

20. DW 3 is the Bataidar of the defendants who in paragraph 2 has stated that 1 acre of land is equivalent to 4 Bigha kachha thus, 16 Bigha is equivalent to 4 acres (approx) thus, the plaintiffs have been sufficiently proved the fact that there was an agreement to sale with respect to 4.01 acres of land and finding contrary thereto given by the learned trial court appears not legal and is contrary to materials available on the record. When DW 9 in his deposition has admitted the price of the land as more than Rs. 70-80 thousand per acres, if this price is also accepted, the consideration amount of Rs. 3,35,000/- being an admitted fact also comes for 4 acres of land and odd which further corroborates and supports the pleadings of the plaintiffs. This also goes to support



the fact that the price of 1.23 acres of land at the rate of Rs. 80,000/- per acres comes to an approx Rs. 98,400/- which is nearing to Rs. 1,00,000/- and also goes to support the execution of two sale deeds which had admittedly being executed for Rs. 50,000/- each taking the amount as round figure as consideration money.

21. The plaintiffs have filed the sale deeds indicating the value of the land in the area of Mauja Kohari from the year 1996 up to 2002. Admittedly, the agreement for sale was entered prior to 16.04.1998 i.e. the date on which first draft amounting to Rs. 1,00,000/- was given for payment to the defendants and which was paid to them on 19.04.1998. Admittedly, the defendant no. 1 has executed two sale deeds on 25.10.1999, one sale deed for 59 decimals and another sale deed for 64 decimals for Rs. 50,000/- each i.e. total 1.23 acres of land was transferred for a consideration of Rs. 1,00,000/-. The rate of land comes to Rs. 813/- per decimal in the year 1998. Ext. 4/B is a sale deed executed by defendant no. 1 in favour of Rajpati Devi with respect to 37.5 decimals two *fasala* land of plot no. 45 for a consideration of Rs. 20,000/- on 28.05.1996. The rate of land comes to Rs. 533/- per decimals in the year 1996. Ext. 4/B is also a sale deed executed by defendant no. 1 in favour of Paudhari Kunwar with respect to 81.5 decimals



of two *fasala* land of plot no. 45 for consideration of Rs. 38,000/- on 28.05.1996. The rate of land comes to Rs. 466/- per decimals approx in the year 1996. Ext. 4/C is a sale deed dated 10.03.1999 executed by Babu Lal Haque Ansari in favour of Buchi Devi for 47.5 decimals of land for consideration of Rs. 24,000/-, the rate of land comes to Rs. 505 /- per decimal approx in the year 1999. Ext. 4 is a sale deed dated 10.07.2002 executed by Saroj Devi in favour of Shiv Kumar with respect to 50 decimals of land for a consideration of Rs. 50,000/-. The rate of the land comes to Rs. 1000/- per decimal in the year 2002. Ext. 4A is a sale deed dated 07.06.2002 executed by Bachau Upadhyay in favour of Sukta Devi with respect to 21 decimals of kast land for a consideration of Rs. 21,000/-. The rate of land comes to Rs. 1000/- per decimal in the year 2002. All the lands under sale are situated in village Kohari.

22. On perusal of the price of the lands as quoted in the different sale deeds, commencing from the year 1996 to 2002, the value of the agricultural land varied from Rs. 466/- per decimal to Rs. 1000/- per decimal. As regards the two sale deeds executed on 28.05.1996, Ext. 4 /B and 4/ D, both related to plot no. 45 which is adjacent to south to lands under agreement i.e. plot no. 66, 67, 65, 64 and 68. The price is at the rate of which sale deeds were



executed was in the year 1996 whereas the agreement in question is prior to April, 1998. The price comes to Rs. 847/- per decimal. All the sale deeds have been executed by defendant no. 1. The price of the land in the year 1998 in comparison to the price in the year 1996 with respect to the adjacent land is more approximate. It cannot be said to be lower as the nature of the land are agricultural and the rising trends within six years span traveled for the year 1996 to 2002 arose from Rs. 466/- per decimal to Rs. 1000/-per decimal. As regards documentary evidences led by the defendants, i.e. the sale deeds with respect to land in mauja Kohari Ext. A to A/9 and Ext. A/3 to A/9, which are sale deeds of the year 2001, being with respect to homestead land were not taken into consideration by the learned trial court. The defendants have got no grievance with respect to the same as no cross appeal has been filed by the defendants. Ext. A/1 and Ext. A/2 being sale deeds dated 01.10.1993 each were also not considered for being a remote past.

23. The defendants did not raise any objection thereto also. The only document which was taken into consideration for the purpose of valuation of the land by the defendants has also heavily relied by the learned trial court was Ext. A which is a sale deed dated 12.03.1999 executed by Dulari Devi in favour of Harihar



Singh with respect to plot no. 142 measuring area 4 decimal for consideration of Rs. 12,000/-. The details of the land has been quoted in the judgment at paragraph 12 at page 14. The said document cannot be taken into consideration for the purpose of valuation as the land has been described as homestead land. Further the part of the land under agreement were plot no. 64, 65, 66, 67, 68 and 69 for which payment has already been made through bank drafts and the sale deeds were executed subsequently on 25.10.1999. From the boundary of plot no. 142 it is apparent that in east of plot no. 142 was the road (Chhwar) in the western side were plot no. 65 which had already been agreed to be purchased by the plaintiffs, in the north boundary was plot no. 69 which also had been purchased by the plaintiffs and hence, the plaintiffs father even after payment of higher consideration money had to purchase the said plot no. 142 as a compulsory purchase as a huge block northern side of plot no. 142 will have the facility of road. The situs of plot no. 142 and the plots purchased by the plaintiffs in the year 1998 is evident from Ext. 5 (map).

24. The learned trial court committed error in considering Ext. A for comparing price of the land with the suit land as the vended land under Ext. A was a homestead land and on that score A/3 to A/9 have already been discarded from consideration. Thus,



in fact there was no documentary evidence on record led by the defendants to show that the valuation of the land for an area of 4.01 acres was much lower than the price of the land prevalent during relevant period of agreement to sale i.e. in the year 1998, more so, when the plaintiffs have brought on record the Ext. 4 series indicating the rising trend in the value of the land in village Kohari with respect to the agricultural land which is very much commensurate with the price of land under agreement. The defendant no. 1 has been examined as PW 9 and in paragraph 9 of his cross-examination he has specifically admitted that he himself had sold land in the year 2001 at the rate of Rs. 80,000/- per acre which fully supports the price of the land as well as the area under agreement.

25. PW 8 in paragraph 4 of his deposition has stated that there are five members in his family and the plaintiffs have got no fear of income tax. He was always ready to give stamp duty on Rs. 3,35,000/-, nothing has come in his cross-examination to disbelieve his testimony.

26. On the other hand DW 9 in his deposition in paragraph 8 of his cross-examination has specifically stated that sale deed was executed by Bashishtha Singh on the rate which was fixed by



the government and at that time in village Kohari the rate was fixed at Rs. 50,000/- per acres.

27. Thus, as per DW 9, the price of 1.23 acres of land, at the circle rate, comes to Rs. 62,000/- but admittedly, the sale deeds were executed for Rs. 1,00,000/-. The pleadings of the defendants as stated in the written statement as well as in the deposition that the plaintiffs wanted to quote the price of the land in sale deeds as per the circle rate fixed by the government is not proved rather the price of the land, as admitted during his deposition by defendant no. 1 (DW 9), at the rate of 80,000/- per acre. Vide paragraph 9 of his deposition the price of 1.23 acres of land comes to Rs. 98,400/- which is very much approximate to Rs. 1,00,000/- and the plaintiffs paid stamp fee as well as court fee at the market price of Rs. 1,00,000/- and not at the circle rate. Hence, question of quoting lesser amount of consideration money for the purpose of evading stamp fee and court fee and also to save income tax on the agreed amount of sale does not arise at all. As only 1.23 acres of land out of 4.01 acres of land have been transferred by way of 2 sale deeds and the plaintiffs/appellants have paid stamp duty thereon as per market value, the rest area of 2.78 acres still remained due to be transferred by executing the sale deeds which is the subject matter of the present suit described in schedule 'Ka' of the plaint. Thus,



these points are decided in favour of the appellants and against the respondents.

28. Point No. (iii):- As has already been held above that there was an agreement to sale 4.01 acres of land to the plaintiffs for Rs.3,35,000/- and not for only 1.23 acres of land and further it has been held that the valuation of the land measuring of 1.23 acres was not Rs. 3,35,000/- rather it was approximately Rs. 1,00,000/- and as such it is manifest that after receiving Rs. 3,35,000/- through four bank drafts, the defendants executed two sale deeds with respect to 1.23 acres of land only for a consideration amount of Rs. 1,00,000/- and remaining consideration amount of Rs. 2,35,000/- remained due for executing the sale deeds with respect to 2.78 acres of land which is described in schedule 'Ka' of the plaint. The learned court below has wrongly discarded the Ext. 4/B and 4/D filed on behalf of the plaintiffs committing an error of record in construing the deposition of PW 8 (paragraph 8) which is not a fact. The plaintiffs have not agreed that vendor of Ext. 4/D and her ancestor were retained worker of the family of the defendants. Learned trial court has wrongly discarded Ext. 4/B and Ext. 4/D filed on behalf of the plaintiffs. PW 1 in his deposition, in paragraph 1, has stated that the defendants handed over the possession over the land to the



plaintiffs, in paragraph 10 he has categorically denied the suggestion given by the defendants. PW 2 has also stated in paragraph 1 of his deposition that the defendants handed over the possession of rest 11 Bigha Kachha land also to the plaintiffs. In paragraph 3 he has categorically denied the suggestion about the possession of the defendants over the suit land. PW 5 in paragraph 5 of his cross-examination has categorically denied the suggestions of defendants that possession was only given on 1.23 acres of land. PW 8 in paragraph 1 of his deposition has categorically stated that defendants have given possession over 4.01 acres of land, in paragraph 10 he has denied the suggestion. The learned court below without referring the evidences adduced on behalf of the plaintiffs has wrongly held that the oral evidence of the plaintiffs was not at all consistent. The learned court below has not discussed the evidences on the point of possession and as such the finding of the learned court below on the point of possession is perverse and is fit to be set aside.

29. On behalf of the respondents, during course of arguments, it has been argued that prayer of injunction sought by the plaintiffs during trial was rejected by the trial court and the said order remained not assailed by the plaintiffs appellants, prima facie, goes to show that the plaintiffs appellants were not in



possession over the suit land. The rejection of injunction petition during trial is an interlocutory order. Any finding given therein cannot be binding on the trial court at the time of final adjudication of the suit and the same merges with the final order. The suit for specific performance of contract is based on agreement to sale. The plaintiffs right / cause of action is a right in personam. The plaintiffs do not acquire right in the property in agreement on the basis of the said agreement and as such in a suit for specific performance of contract, the plaintiff is not entitled for injunction. Thus, from such rejection, it cannot be presumed that the plaintiffs were not in possession over the suit land. The plaintiffs have been able to prove that in the admitted agreement for the sale of the land the area was 4.01 acres instead of 1.23 acres as claimed by the defendants. The defendants are bound to execute the sale deed with respect to the suit land i.e. 2.78 acres of land as the consideration amount of Rs. 2,35,000/- remained due with the defendants.

30. On behalf of the respondents it has further been argued that the suit property was the property of the wife of the defendant no. 1 and after her death the same devolved upon her sons and daughters and as such the agreement cannot be entered only by defendant no. 1 and no decree can be passed in pursuance of the



said agreement. The aforesaid submission has been considered by the learned trial court in paragraph 15 of the impugned judgment and taking into consideration the several sale deeds executed by defendant no. 1 the said submission was rejected holding the same has no force. The defendants have not assailed the said findings by filing any appeal or cross objection in the present appeal, even though, the said finding was against the defendants / respondents. After amendments brought in the Code of Civil Procedure in 1997 a right has been given to the party who succeeded in the said suit to assail the said findings adverse to their interest by way of cross-objection under order 41 Rule 2 of the C.P.C. This view finds support from the judicial pronouncement of the Apex Court in the case of **Hardevendra Singh Vs. Pramjit Singh and Others** reported in **(2013) 9 SCC 261** (paragraph 21 at page 268). The respondents being aggrieved with the findings of the trial court cannot challenge the same without filing any cross objection against the same otherwise the same attain finality.

31. On behalf of respondents it has further been argued that since the agreement was entered on behalf of plaintiff no. 1 only, hence, the other plaintiffs are not entitled to get any decree in the suit in question. In this regard, it is to be noted that here there is an oral agreement which has been admitted by the defendants.



Defendant no. 1 has also admitted that he has executed two sale deeds pursuance to the said agreement entered between plaintiff no. 1 and defendant no. 1. One sale deed was executed in favour of plaintiff no. 1 and his brothers and another sale deed was executed by defendant no. 1 in favour of wife of plaintiff no. 1 and wives of plaintiff's brothers without there being any objection by defendant no. 1. In the present suit Bashista Singh plaintiff no. 1 is himself a party in the suit, hence, joining of other brothers with the plaintiff no. 1 cannot be raised at this stage, more so, when no pleadings as defects of parties has been mentioned in the written statements filed by the defendants. Section 20 of the Specific Relief Act provides that the Court's discretion to grant decree for specific performance is discretionary but not arbitrary. Discretion must be exercised with sound and reasonable judicial principle. It has been settled by judicial pronouncement that under Section 20 of the Specific Relief Act a party is not entitled to a decree for specific performance merely because it is lawful to do so. Nevertheless once an agreement to sale is legal and validly proved and further requirements or getting such a decree are established, then the court has to exercise its discretion in favour of the granting relief for specific performance. Here the plaintiffs by leading evidence has been able to prove that there had been an agreement for sale



for an area of 4.01 acres of land for a consideration money of Rs. 3,35,000/-, the payment of entire consideration money amounting to Rs. 3,35,000/- has been admitted by the defendants, there is no grievance of the defendants that there had been delay in payment of consideration money, the only dispute that was raised by the defendants that the area under agreement was not 4.01 acres rather the same was 1.23 acres. It was not the case of the defendants that the plaintiffs are not willing to perform their part of contract but the entire consideration money amounting to Rs. 3,35,000/- has been paid in advance through four bank drafts. The defendant no. 1 executed two sale deeds for part of the area which has been proved by the plaintiffs by leading evidence that the area was 4.01 acres, more so, when the plaintiffs have been put in possession over the entire area, hence, the plaintiffs are entitled to get a decree for part performance of sale with respect to schedule 'ka' land of the plaint. So far as the judgments relied upon by the respondents reported in **AIR 1987 Supreme Court 2328** is concerned, the same is not applicable in the facts and circumstances of the present case. In the case it cannot be said to be an instrument oppression to for unfair advantage to the plaintiffs rather it is a case based on admitted agreement for sale in which the entire consideration



money had been paid in advance. Accordingly, this point is decided in favour of the appellants and against the respondents.

32. Point No. iv:- As has already been held above that the plaintiffs are entitled to get a decree for part performance of the sale with respect to schedule 'ka' land of the plaint i.e. for an area of 2.78 acres for balance consideration amount of Rs. 2,35,000/- and as such now there is no need to grant alternative relief to the plaintiffs and accordingly, this point is decided.

33. Point No. v:- As has already been held above, the judgment and decree passed by the learned trial court is otherwise bad in law and on facts and further it is perverse. The learned trial court has not considered the pleadings of the parties and evidences available on the record in right perspective. The learned trial court has failed to consider the statements as made in the plaint in its entirety and as such it is held that the judgment and decree passed by the learned trial court is not maintainable and is fit to be set aside.

34. In the result, the judgment and decree passed by the learned trial court is hereby set aside and the instant appeal stands allowed with contest but under the circumstances without cost. The respondents are directed to execute the sale deed with respect to schedule 'ka' land in favour of the appellants within two months



failing which the same will be executed through the process of the Court.

(Jitendra Mohan Sharma, J)

avin/-

AFR/NAFR	NAFR
CAV DATE	06.12.2017
Uploading Date	16.01.2018
Transmission Date	16.01.2018

