

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.7 of 2016

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Sarwan Mahto, Son of Late Kesho Mahto, Resident of Mohalla - Pratappur,
P.S. - Mehndiganj, P.O. - Patna City, District - Patna.

... .. Appellant

Versus

Sujay Kumar Mahto, Son of late Phaggu Mahto @ Phaggun Matho, Resident
of Mohalla - Purbi Kasba, Krishna Bagh, P.S. - Mehndiganj, District - Patna.

... .. Respondent

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Appearance :

For the Appellant/s : Mr. Rajendra Prasad, Sr. Adv.
Mr. Pramod Kumar
Mr. Ritesh Kumar
Mr. Dharendra Kumar

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

JUDGMENT AND ORDER
ORAL

Date : 01-02-2018

This second appeal, under Section 100 of the Code of Civil Procedure, 1908, has been preferred against the judgment and decree, dated 10.10.2015, passed by learned Additional District Judge IV, Patna City, in Title Appeal No. 20 of 2015, affirming the judgment and decree, dated 07.01.2015, passed by learned Sub Judge IV, Patna City, in Title Suit No. 02 of 2008.

2. The appellant was the defendant before the Trial Court. The respondent herein had filed a suit, giving rise to Title Suit No. 02 of 2008, for getting decree of specific performance of contract in respect of the land, bearing Khesra No. 1745, Khata No. 1369,



thana no. 19, touzi State of Bihar, situated at mouza Ranipur, P.S. Khajekalan, Patna, ad-measuring 2 kathas. It was the plaintiff's case that in respect of the said suit property, the defendant had entered into an agreement to sell on 06.03.2006, for transfer of the said suit property at the rate of Rs. 1,80,000/- per katha. The amount of Rs. 1,00,000/- was given as advance money. The said deed was required to be executed by the defendant within 7 (seven) months from the date of execution of the agreement to sell, i.e. by 06.10.2006. It was his further case that on 18.09.2006, an amount of Rs. 27,000/- was paid to the defendant-appellant with an endorsement on the back of the document of agreement to sell, indicating extension of time by which the sale deed was to be executed. It was the plaintiff's case that time for execution of sale deed was extended to 25.12.2007.

3. The defendant appeared in the suit and filed his written statement. He admitted the factum of execution of the deed of agreement to sell, payment of a sum of Rs. 1,00,000/- by the plaintiff as an advance and subsequent payment of Rs. 27,000/- by the plaintiff on 18.09.2006. Though, he admitted that time for execution of sale deed on payment of total consideration money was extended, but he denied that the time was extended to 25.12.2007; rather, according to him, it was extended to



25.01.2007. He pleaded that the case of the plaintiff to this extent was false and cooked up. He also pleaded that since the plaintiff defaulted in making payment of the balance consideration money, for the purpose of execution of the sale deed within the extended time on 25.01.2007, he had sent three legal notices, through registered post, to the plaintiff, on 12.02.2007, 08.03.2007 and 21.03.2007, but the plaintiff was not ready and willing to execute the sale deed. The defendant/appellant resisted the suit main on this ground.

4. Based on the rival pleadings of the parties, the Trial Court framed altogether six issues, including issue nos. 3 and 4, which read thus:-

“3. Has the plaintiff played fraud with the defendant by extending the period on the *baibeyana* deed, dated 06.03.2006 by making interpolation in the month?

4. Has the plaintiff been and is still ready and willing to get the sale deed executed and registered by the defendant on payment of balance amount of consideration money to the defendant?”

5. The parties adduced their evidence, both oral and documentary, at the trial. Upon analysis of the evidence adduced at the trial, dealing with issue no. 3, learned Trial Court held that



there was no fraud played by the plaintiff in the matter of extension of time for execution of the sale deed and payment of consideration amount to 25.12.2007. Learned Trial Court held that the defendant miserably failed to establish his case of fraud in extension of time to 25.12.2007 for execution of the sale deed.

6. The Trial Court thereafter took the fourth issue, i.e. as to whether the petitioner was ready and willing to get the sale deed executed and registered by the defendant on payment of balance amount of consideration money to the defendant and considering again the evidence of witnesses adduced at the trial, recorded the finding that the plaintiff was always ready and willing to pay the balance amount of consideration money.

7. Accordingly, learned Trial Court decreed the suit on contest, directing the defendant to execute the sale deed in respect of the suit property upon receiving the balance consideration money of Rs. 2,33,000/- within two months from the date of the order, failing which the plaintiff might get executed the sale deed through the process of law.

8. The defendant preferred appeal, giving rise to Title Appeal No. 20 of 2015, which has been dismissed by learned Additional District Judge IV, Patna City.



9. The appellate court below formulated following two points for consideration:-

- “1. Whether any interpolation is made in the month of extended date in Exhibit-1/A?
2. Whether the trial court has rightly exercised his discretion as guided by judicial principles as to decree in the relief of specific performance of contract?”

10. Dealing with the first point, the appellate court below has concurred with the findings of fact recorded by the Trial Court, and has held that there was no interpolation made in recording ‘month’ of the extended date. Considering the second point, learned appellate court below is of the view that with the efflux of time and escalation/rise in the price of the suit property, it was fair and reasonable to enhance sale price of the suit property by way of additional condition to balance the equity. The appellate court below accordingly has found it to be fair and reasonable to direct the plaintiff-respondent to pay balance consideration money at the rate of Rs. 3 lakhs per *katha*, after deducting the earnest money in the total balance consideration money.

11. Learned Senior Counsel appearing on behalf of the appellant has submitted that there is perversity in the findings recorded by the courts below on the point that the plaintiff-



respondent was ready and willing to pay the consideration amount. He has submitted that as a matter of fact, the plaintiff did not have the adequate fund to pay the consideration money and he could not establish at the trial that he had adequate fund ready for payment of the balance of the consideration money. He has also submitted that the courts below have wrongly shifted the burden on the appellant to prove that 'the month' of the extension of time was fraudulently incorporated. According to him, the plaintiff was required to prove the correctness of the same.

12. I have perused the judgments of the courts below. I do not find any perversity in the concurrent findings recorded by the two courts, which are based on evidence, which have been duly discussed and appreciated in the respective judgments. The appellate court below has formulated the points for determination and has independently considered the evidence on record. I do not find any infirmity in the finding recorded by the court below. Since, it was the case of the defendant that 'month' of the extended time was fraudulently made 12 instead of 1, the burden was on him to prove it.

13. In my view, in the backdrop of the discussion, as above, the present second appeal does not involve any question of law, much less, substantial question of law.



14. The second appeal does not deserve admission and is accordingly dismissed.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	N/A
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