

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**SECOND APPEAL No.475 of 2010**

---

OM PRAKASH GUIDE

... .. Appellant/s

Versus

1. JAGDISH NARAYAN GUPTA
2. Ujjwal Raj
3. Vikash Raj
4. Depak Raj
5. Dulhin Dineshwari Devi
6. Satya Prakash
7. Uma Nath
8. Sobh Nath
9. Gopal Prasad
10. Sudha Devi

... .. Respondent/s

---

**Appearance :**

|                      |   |                         |
|----------------------|---|-------------------------|
| For the Appellant/s  | : | Mr. Gopal Govind Mishra |
| For the Respondent/s | : | Mr. Ashok Kumar Sharma  |

---

**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA**  
**ORAL JUDGMENT**

**Date : 31-01-2019**

Heard Mr. Gopal Govind Mishra, the learned counsel for the appellant, and Mr. Buxi S. R. P. Sinha, the learned senior counsel for the respondent Nos. 1 to 4.

2. The appellant has filed this appeal under Section 100 of the Code of Civil Procedure against the judgement and decree passed by learned Additional District Judge-III (F.T.C.), Bhojpur, Ara in Title Appeal No. 27 of 2004 whereby the learned Additional District Judge set aside the judgement and decree dated 18.08.2004 passed by learned Munsif- II, Ara in Title Suit No. 2 of 1990.

3. The appellant is plaintiff. The appellant filed the suit for specific performance of contract with regard to land mentioned in schedule-2 of the plaint. The plaintiff is grand son of Ranglal. Ranglal got five daughters



and one son. Ranglal died in the year 1957 leaving behind four daughters and one son. His 5<sup>th</sup> daughter Kamla Devi died issueless. After death of Ranglal his wife Panna Devi got strained relation with his son and daughter-in-law. Panna Devi purchased 26 Kari land, fully mentioned in schedule-1 of the plaint, in the year 1961 through a registered sale deed. Panna Devi sold 8 Kari land in favour of his eldest daughter, Rampyari Devi. Rampyari Devi constructed house thereon. Rampyari Devi is defendant No. 10. Bishwanath Prasad, sole son of Ranglal and Panna Devi died leaving his widow Panpati Kuer and sons, who are defendant Nos. 4 to 8. Panpati Kuer is defendant No.9. Panna Devi agreed to sale the remaining portion of land measuring 18 Kari to the plaintiff/ appellant on consideration of Rs. 20,000/-. She received Rs. 15000/- as part consideration money but sale deed could not be executed on account of illness of Panna Devi. After death of Panna Devi the plaintiff requested the defendants to execute the sale deed, after receiving remaining consideration amount, but the defendants refused to execute the sale deed.

4. The widow and sons of Bishwanath Prasad, defendant Nos. 5 to 9, contested the suit denying execution of any Mahadanama in favour of plaintiff/ appellant. The learned Munsif framed as many as eight issues and decreed the suit. The defendant No.1 filed appeal being Title Appeal No. 27 of 2004 and the learned 3<sup>rd</sup> Additional District Judge, ((FTC), Bhojpur, Ara by judgement dated 22.04.2010 allowed the appeal holding that the learned Munsif did not decide any issue as required under Order 20 Rule 5 of the Code of Civil Procedure and by giving composite finding, without taking into consideration the oral and documentary evidence with regard to execution of Mahadanama and willingness and readiness of the plaintiff as required under Section 16(3) of the Specific Relief Act and dismissed the suit. Being



aggrieved by the judgement and decree passed by the learned first appellate court, the appellant has filed this Second Appeal.

5. The learned counsel for the appellant submits that learned first appellate court has held that the learned Munsif did not give any separate finding on all issues and decided the suit compositely but the learned first appellate court has also committed same error and did not give finding issue-wise as required under Order 41 Rule 31 of the C.P.C. It is submitted that appeal under Section 96 of the C.P.C. confers statutory right on the appellant, the appeal is in continuation of the proceedings, which casts duty upon first appellate court to consider the pleadings of the parties and reappraise the evidence independently. It is further submitted that learned first appellate court admitted the facts that learned Munsif has not decided the suit in accordance with law as he did not give finding on all issues as required under Order 20 Rule 5 of the C.P.C. and if the learned first appellate court finds that the Munsif has not decided the suit, after giving finding on each issue, the matter should have been remanded to the learned Munsif but the learned first appellate court has committed same jurisdictional error by allowing the appeal and dismissing the suit.

6. Mr. Buxi S.R.P. Sinha, the learned counsel for the contesting respondents, has very fairly and candidly accepted the factual position that neither the trial court nor the first appellate court recorded finding on all issues as framed in the suit on the basis of pleadings.

7. After hearing both sides and on consideration of judgements of both the courts below, I find that the following substantial question of law is involved in this appeal:-

*“Whether the judgement of the trial court as well as the first appellate court suffers from illegality on the ground of non consideration of*



*the evidence of the parties according to issues framed in the suit and as required under Order 20 Rule 5 and order 41 Rule 31 of the Code of Civil Procedure?”*

8. Order 20 Rule 5 of the C.P.C. mandates that in suit in which issues have been framed, the court shall state its finding or decision, with the reasons therefor, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit.

9. Similarly, Order 41 Rule 31 mandates that the appellate court shall be in writing and shall state the points for determination, the decision thereon with the reasons for such decision.

10. On perusal of the judgement of trial court, I find that learned Munsif has framed as many as eight issues on the basis of pleading of both sides but the learned Munsif did not give any finding on any issue and held that the plaintiff is entitled to get judgement and decree for specific performance of contract. Similarly, on perusal of the judgement of the learned first appellate court, I find that the learned first appellate court held and found that the learned trial court did not record the finding on all issues but at the same time picked some evidence from hither and thither and allowed the appeal and set aside the judgement and decree passed by the trial court on the ground that existence of Mahadanama itself is doubtful, without referring any finding on any particular issue about the genuineness of the execution of Mahadanama and readiness and willingness of the plaintiff to perform his part of agreement. Order 41 Rule 31 of the C.P.C. casts legal obligation and duty on the first appellate court to hear first appeal, which is a statutory right of a party, and determine the issues on the basis of pleadings of both sides after reappraising the evidence of both sides available on record. Similar view has



been expressed by a Single Judge of this court in the case of **Most. Kanti Devi v. Narain Khawas** reported in **2010 (1) PLJR 940**.

11. Thus, I find that the both the courts below have failed to deliver the judgement and determine the issues after appraising the evidence of both sides available on record. Therefore, I find that the order passed by the both the courts below are illegal and as such not sustainable.

12. Having considered the facts aforesaid, this appeal is allowed and the judgement and decree passed by learned Additional District Judge-III (F.T.C.), Bhojpur, Ara in Title Appeal No. 27 of 2004 and the judgement and decree dated 18.08.2004 passed by learned Munsif- II, Ara in Title Suit No. 2 of 1990 are set aside. The matter is remitted to the learned Munsif- II, Bhojpur, Ara to hear both sides and decide the suit in accordance with law on the basis of evidence available on record.

**(Prabhat Kumar Jha, J)**

BKS/-

|                   |            |
|-------------------|------------|
| AFR/NAFR          | NAFR       |
| CAV DATE          | N.A        |
| Uploading Date    | 13-03-2019 |
| Transmission Date | N.A.       |

