

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.499 of 2017

1. Smt. Shyama Choudhary, W/o Sri Baikunth Choudhary.
2. Baikunth Choudhary, S/o Late Anrudh Choudhary, both resident of Mohalla Lalbagh, Town Darbhanga, P.S. Darbhanga, District Darbhanga.

-Defendants – Appellants - Appellants
Versus

1. Krishna Kumar Prasad, S/o late Chhathoo Prasad, Resident of Mohalla Bela Shankar, P.S. L.N.M.U. , Town Darbhanga, District Darbhanga.

-Plaintiff- Respondent 1st Party- Respondent 1st party

2. Ram Abtar Yadav, S/o Late Hit Lal Yadav, Resident of Mohalla Buchaman Pargana, Purab Bhigo, P.S. Sadar, District Darbhanga.

-Defendant 2nd Party-Respondent 2nd Party-Respondent 2nd Party.

Appearance :

For the Appellant/s : Mr.Manish Jha
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

5 15-11-2019 The appellants by filing this second appeal assailed the judgment and decree passed by learned Sub Judge-IV, Darbhanga in Title Suit No.64 of 1999 by which the suit of the plaintiff is decreed and the judgment and decree dated 27.07.2017, passed in Title Appeal No.13 of 2015 by which the learned District Judge, Darbhanga dismissed the appeal and affirmed the judgment and decree passed in Title Suit No.64 of 1999.

2. The appellants are defendants no.1 and 2. Plaintiff-Respondent No.1 filed the suit for specific performance of contract against the defendants. The plaintiff entered into an agreement to purchase a piece of land of Plot No.9, Khata No.105, situated in Village Ranipur, P.S. Sadar, District Darbhanga on 09.06.1998. The



appellant no.1 entered into a written agreement and after receiving part consideration money of Rs.7000/-, it was agreed that the sale deed was executed whenever the remaining consideration amount was paid to the appellant no.1. The appellant no.1 was in need of some money and contacted the plaintiff. The plaintiff again paid Rs.5000/- on 23.07.1998 to the husband (defendant no.2) of appellant no.1 and mentioned the same in the deed of agreement. On the date of execution of the deed of agreement, appellants-defendants no.1 and 2 put the plaintiff in possession of the land and started cultivating. The plaintiff managed the remaining consideration amount on 15.10.1998 and requested the defendants-appellants to execute the sale deed but on one pretext or the other, the defendants no.1 and 2-appellants refused to execute the sale deed. The defendants threatened to dispossess the plaintiff on the pretext that they had already executed the sale deed in favour of Ram Awatar Yadav, defendant no.3 on 21.06.1999.

3. The defendants-appellants contested the suit. Although defendant no.1 admitted that she had talk for sale of land but denied to have executed any deed of agreement after receiving Rs.7000/- as part consideration money from the plaintiff. The defendant no.1 admitted that she was ready to execute the sale deed. She sent a legal notice for payment of money but the plaintiff was not willing to get the sale deed executed. Thereafter the defendant no.1 executed the sale deed in favour of Ram Awatar Yadav on 21.06.1999. Further



case of the defendant no.1 is that she requested the plaintiff several times to get the sale deed registered but the plaintiff was not willing, therefore, the plaintiff is not entitled to get any relief as she has already executed the sale deed in favour of Ram Awatar Yadav after receiving consideration of Rs.32,000/- in order to pay of the dues incurred by her on marriage of her daughter.

4. The trial court besides other issues settled the issues whether defendant no.1 executed a deed of agreement to sell the lands of Schedule I on 09.06.1998 in favour of the plaintiff and the plaintiff is ready and willing to get the sale deed executed after payment of the remaining consideration amount?

5. The learned Sub Judge recorded the finding while deciding the issues that the defendant no.1-appellant no.1 entered into an agreement on 09.06.1998 to sell the lands mentioned in Schedule I of the plaint after receiving part consideration money but later on refused to execute the sale deed and, therefore, the defendant no.1 is liable to execute the sale deed with regard to the lands mentioned in Schedule I of the plaint after receiving the remaining consideration amount. The first appellate court returned with the same findings dismissing the appeal preferred by the appellants.

6. Mr. Kali Kant Jha, the learned counsel for the appellants submits that the judgment and decree passed by both the courts are erroneous and illegal. Both the judgments are against the evidence and material available on record. It is further submitted that



both the courts have failed to appreciate that the appellant no.1 admitted the execution of Mahadanama agreement in her Written Statement subject to modification that the plaintiff-respondent 1st party committed forgery and this fact reflects from the legal notice given by the appellant no.1 (Ext. A/1). Both the courts did not give any finding with regard to the fraud. It is further submitted that in view of the provisions as contained in Sections 18(1) and 24 of the Specific Relief Act, the judgment and decree are fit to be set aside. It is further submitted that the appellant-defendant no.1 gave notice to the respondent for payment of remaining consideration money on the eve of marriage of her daughter but the respondent did not respond to the notice of the appellant nor paid the remaining consideration amount and that is why the appellant was under compulsion to sell the land to Ram Awatar Yadav to meet the expenses of marriage of her daughter. From these facts it was explicit that the respondent was not willing to pay the remaining consideration amount on demand and thus the respondent is not entitled to get relief for specific performance of contract and judgments and decrees of both the courts are liable to set aside.

7. Having considered the submissions and on perusal of judgments of both the courts, I find that it is admitted fact that appellant no.1, who was defendant no.1 in the suit, admitted the execution of deed of agreement to sell on 09.06.1998 but the defendant contended that after execution of the deed of agreement to



sell, she was in need of money and, therefore, she gave legal notice to the plaintiff for payment of money as she required money for marriage of her daughter but the plaintiff neither gave reply to the legal notice sent by her nor paid any money to the defendant no.1 and consequently the appellants sold the land to one Ram Awatar Yadav on 21.06.1999 and it is contended that this aspect of the case has not been considered by the courts but both the courts consistently and concurrently held that deed of agreement to sell does not contain any stipulation for payment of the remaining consideration amount within short span i.e. within three months but after execution of the deed of agreement, the plaintiff approached the defendant no.1-appellant within three months for payment of the remaining amount and for execution of the sale deed. When there was no stipulation in the deed of agreement to sell that remaining amount is to be paid within short span of time, the defendant cannot force the plaintiff to pay the remaining amount immediately or in a very short time to meet the expenses of marriage of her daughter and on such excuse the defendant no.1 cannot deny/retract from performing her own part by executing the sale deed after tendering the remaining consideration amount by the plaintiff. The pleading of the defendant no.1 that the plaintiff made interpolation in the deed of agreement for sale is also found not correct. I find that the refusal of the defendant no.1 to execute the sale deed in favour of plaintiff on such condition such as non-payment of remaining consideration amount immediately after



the execution of the deed of agreement to sell which is not part of the agreement between the parties is illegal and defendant is bound to perform her part by executing the sale deed in favour of the plaintiff and, therefore, the execution of sale deed by the defendant no.1 in favour of third party during the subsistence of the agreement between the plaintiff and the defendant no.1 is illegal and the defendant no.1 is bound to execute the sale deed in favour of plaintiff on the basis and condition contained in the deed of agreement to sell.

8. Having considered the facts and discussions made above, I find no substantial question of law arises for consideration in this second appeal. Consequently, the second appeal is dismissed as devoid of any merit.

(Prabhat Kumar Jha, J)

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