

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.206 of 2015

Uday Kumar Chakravarty son of Late Prafulla Chandra Chakravarty resident of village- Siya Ram Nagar, P.S. Ishakchak, District- Bhagalpur.

... .. Appellant/s

Versus

Smt. Jusha Devi @ Josna Devi wife of Late Mahesh Tanti, resident of Mohalla- Mundichak, PS- Tilka Manjhi, District- Bhagalpur

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ganpati Trivedi, Senior Advocate
Mr. Madan Mohan, Advocate

For the Respondent/s :

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT

Date : 11-10-2022

1. This second appeal under Section 100 of the Code of Civil Procedure has been directed against the judgment and decree dated 19.05.2015 passed by 3rd Additional District Judge, Bhagalpur in Title Appeal No. 115 of 2012 confirming the judgment and decree dated 30.07.2012 passed by Sub-Judge-4, Bhagalpur in Title Suit No. 65 of 2006.

2. Appellant is the plaintiff in the suit before the Trial Court who had brought the suit for a decree of specific performance of contract directing the defendant to execute the registered sale deed in favour of plaintiff relating to the suit property failing which the same to be executed through process of the Court and also for delivery of possession of the suit property to the plaintiff and for declaration of cancellation of



deed dated 03.01.2006 as illegal, inoperative and not binding on the plaintiff together with other reliefs.

3. The case of the plaintiff-appellant is that the defendant is the owner of the suit property in which she has possession and she was need of money for her business so proposed the plaintiff to sell the suit property and they finalized the sell of suit property at Rs.1,25,000/-. On 20.10.2005 the plaintiff given three bank drafts two for Rs.40,000/- each and one for Rs.20,000/- to defendant and registered Zerbeyana deed dated 28.10.2005 in which husband of defendant stood witness. The defendant promised to execute the registered sale deed and would receive the balance consideration amount of Rs.25,000/- from the plaintiff. The defendant vide notice dated 21.12.2005 denied to execute the registered sale deed in favour of plaintiff on false allegation which was replied on 30.12.2005 by the plaintiff and expressed his readiness and willingness to purchase the suit property from the defendant. The defendant cancelled the said Zerbeyana on 03.01.2006. It is alleged that a letter was received by plaintiff from defendant that she is sending a bank draft of Rs.1,00,000/- but the same did not contain in envelop.

4. The case of defendant through his written statement is that plaintiff has paid Rs.1,00,000/- through three account payee



bank drafts by way of loan and not towards as part consideration money and by committing fraud upon the defendant and her husband got scribed deed of agreement pretending it to be the deed of loan and obtained their signature and got registered the same in the registry office on 28.10.2005. The defendant came to know this fact, sent back draft of Rs.1,00,000/- to the plaintiff with a letter and executed a deed of cancellation dated 03.01.2006 for cancelling the agreement dated 28.10.2005 and has filed a Complaint Case No.98/2006 against the plaintiff in the Court of C.J.M., Bhagalpur for taking legal action. The question of demand of earnest money and execution of sale deed does not arise.

5. The Trial Court considering the evidence on record held that Zerbeyana dated 28.10.2005 was not in real sense and there was no intention of the defendant to create the same, it was executed in the guise of loan document. It was also found that it appears that the plaintiff himself has not got the bank draft of Rs.1,00,000/- encashed but it is also fact that defendants are not in possession of the same. It is further held that there was contract for agreement to sell though it was not void but from the circumstances of the case and intention and conduct of parties specially that of the plaintiff it was unfair to grant decree



for specific performance of contract. Accordingly, suit was dismissed on contest with direction to defendant to aid the plaintiff if needed in getting the demand of draft of Rs.1,00,000/- encashed by him.

6. In appeal, the Appellate Court below analyzing the evidence on record confirmed the finding of the Trial Court and dismissed the appeal.

7. Learned Senior Counsel for appellant has submitted that the learned Courts below failed to appreciate that there was no issue framed regarding alleged fraud committed by the plaintiff in execution of the Zerbeyana dated 28.10.2005 and no evidence had been led by the parties on the said issue accordingly it cannot be justified in arriving at a finding that a fraud was committed by the plaintiff upon the defendant. It is further submitted that the execution of the registered agreement (Zerbeyana) dated 28.10.2005 having been admitted by the defendant including the acceptance of money in the recital thereof, the learned Courts below are not justify in holding that the propounded story of the defendant of loan moreso when the defendant did not lead any evidence to rebut the presumption of correctness of the registered Zerbeyana deed.

8. Having heard the learned counsel for the appellant and



on perusal of the judgment of Courts below it appears that there is concurrent finding of the Courts below on consideration of evidence on record and there is no perversity or unreasonableness in the said finding. There is no merit in this Second Appeal for interference by this Court under Section 100 of C.P.C. There is no substantial question of law arises for consideration.

9. In view of aforesaid discussion, this Second Appeal is dismissed at the admission stage itself.

(Sunil Dutta Mishra, J)

kamlesh/-

AFR/NAFR	NAFR
CAV DATE	03.08.2022
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