

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.444 of 2018

Smt. Durgawati Devi, Wife of Sri Birendra Prasad Singh, Resident of Mohalla- Jagdeo Nagar, P.S.- Ara, P.O.- Ara, Nawada, District- Bhojpur, Bihar

... .. Defendant/Respondent/Appellant
Versus

1. Smt. Sudha Devi, Wife of Shri Bharat Prasad, Resident of Village/Mohalla- Nawada, Ara, P.O.- Ara, Nawada, P.S.- Ara, Nawada, District- Bhojpur, Bihar

Plaintiff/Respondent/Respondent Ist Set

2. Saufiya Bano, Daughter of Late Khalil Khan, Resident of Mohalla- Bandhan Tola, Ara, P.S.- Ara, Nawada, District- Bhojpur, Bihar

... .. Defendant/Respondent/ Respondent IInd Set

Appearance :

For the Appellant/s : Mr. Prabhat Kumar Dipak
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT

Date : 11-10-2022

This Second Appeal is directed against the Judgment dated 31.07.2018 and Decree dated 18.08.2018 passed by learned Additional District Judge IInd, Bhojpur at Ara in Title Appeal No. 02 of 2017 affirming the Judgment dated 29.11.2016 and Decree dated 09.12.2016 passed by learned Sub Judge VIIIth, Bhojpur at Ara in Title Suit No. 46 of 2005.

2. The appellant was defendant in the Trial Court and respondent 1st Set was the plaintiff who filed the suit against defendants seeking relief for decree of specific performance of contract about the suit property and also that defendants be directed to execute the sale deed before the Registrar in favour of



the plaintiff as per the Mahadanama (agreement to sale) and also to declare that defendant 1st set had no right to execute sale deed dated 25.08.2004 in favour of defendant 2nd set and the said sale deed dated 25.08.2004 is without consideration and not binding upon plaintiff with other relief.

3. The case of the plaintiff is that she was the tenant of defendant no. 1 who became ready to sell out the suit property to plaintiff on payment of consideration money of Rs. 1,17,000/- and plaintiff had given Rs. 60,000/- as earnest money and a registered Mahadanama dated 11.05.2004 was executed by defendant no. 1 in favour of plaintiff. On the basis of said registered Mahadanama dated 11.05.2004 the sale deed dated 11.08.2004 was presented before Registrar but defendant no. 1 fled away from the Registry Office in collusion with defendant no. 2 before admitting the registration of document.

4. The defendant no. 2/appellant, appeared in the suit and filed written statement stating therein that when defendant no. 1 agreed to sell the suit property then Mahadanama dated 25.12.2003 (Ext. B) was executed in favour of defendant no. 2 and after receiving the full and final consideration money, sale deed dated 25.08.2004 with respect to suit property was executed followed by mutation and possession of the defendant no. 2. The



municipal record of right was also prepared with respect to the holding of the purchased house and thereafter defendant no. 2 reconstructed and remodeled the suit property.

5. On the basis of pleading, the Trial Court framed as many as six issues including issue no. 5 as to whether the plaintiff legally entitled for a decree of specific performance of contract about the suit land property as prayed for?

6. In Trial Court, after considering the evidence on behalf of the parties given finding that the registered Mahadanama deed dated 11.05.2004, executed by defendant no. 1 in favour of plaintiff is genuine and valid document and is admissible as evidence. Defendant no. 2 had full knowledge about the execution of Mahadanama deed dated 11.05.2004 and sale deed dated 11.08.2004 by defendant no. 1 in favour of plaintiff. Accordingly, it is held that defendant no. 2 is not a bonafide purchaser of valid consideration and decided issue no. 5 in favour of the plaintiff and allowed the suit on contest for defendant no. 2 and decreed accordingly.

7. In this appeal, the First Appellate Court affirmed the Judgment and Decree of the Trial Court.

8. Heard learned counsel for the appellant.



9. Learned counsel for the appellant submits that the learned Trial Court as well as the learned Appellate Court failed to appreciate that respondent no. 1 in compliance of the agreement with appellant on 25.12.2003, had executed sale deed in her favour on 25.08.2004 and suppressing this fact she had entered into an agreement with the appellant on 11.05.2004 in order to defraud her. He has further submitted that the judgments and decrees passed by the learned courts below in favour of respondent no. 1 of specific performance of the contract is wholly bad in law, perverse and not based on law and facts.

10. He has next submitted that the courts below failed to appreciate that a decree for specific performance of contract under Section 27 of the Specific Relief Act cannot be passed against the defendant no. 2, who was not a party to the contract entered into between the plaintiff and defendant no. 1. He has further submitted that after presentation of instrument before the registration authority and refusal by respondent no. 1, the plaintiff's suit is not maintainable when legal remedy is available under Section 36 and other Sections of the Registration Act for compulsory registration and suit for specific performance is not maintainable.

11. Lastly he has submitted that both the courts below have committed illegality in jurisdictional error by not giving



finding about the compulsory registration as well as order for refund of the money paid under the Mahadanama entered between the parties and in absence thereof the impugned judgment is fit to be set aside.

12. It is relevant to discuss the provision of law raised by learned counsel for the appellant with respect to objection of maintainability of suit for specific performance. Under Section 27 of Specific Relief Act, 1963 a person having some interest in the contract can request the court to rescind the contract i.e., to declare that the contract is not binding on him. The privity of contract provides that the party to contract can enforce the contract. It means as per this principle only the party to contract can claim the relief of rescission. However, Section 27 of the Specific Relief Act, 1963 provides an exception that a person who has some interest in the contract can enforce the contract and claim rescission.

13. Section 36 of the Registration Act, 1908 lays down the procedure to be followed where appearance of the executant or witnesses, is desired. It pre-supposes the proper presentation of the document or that it is capable of being so presented. The Section does not provide for summoning of the document itself.



14. In my considered opinion the purchaser is always entitled to insist upon his right to have a proper conveyance. It is true that the purchaser can resort to proceeding under the Registration Act and the special statutory remedy under Section 77 of the Act to obtain registration of executed document. But if for any reason it prevented any resort to such proceedings under the Act then undoubtedly the vendee is entitled to bring a suit for specific performance of the agreement to sell in his favour. This does not however mean that every suit should be decreed. Being the equitable remedy, a court is not bound to grant specific performance in every case in which agreement has not been carried out in its entirety. Well established equitable consideration would justify a court for passing the order for grant the relief of specific performance.

15. Having heard learned counsel for the appellant and on perusal of the judgments of both Trial Court and Appellate Court, it appears that both the courts below have given concurrent finding, on the basis of evidences that Mahadanama dated 25.12.2003 executed by defendant no. 1 in favour of of defendant no. 2 is not registered whereas Mahadanama dated 11.05.2004 by defendant no. 1 in favour of the plaintiff is registered which is genuine and correct document and admissible as evidence. It is



also held that defendant no. 2 had full knowledge about execution of Mahadanama deed dated 11.05.2004 by defendant no. 1 in favour of plaintiff.

16. The courts below have applied their judicial mind and the finding of the facts based on evidence cannot be stated as perverse. There is no perversity or unreasonableness in the concurrent findings of both the courts below and no substantial question of law arises in this Second Appeal.

17. Accordingly, this Second Appeal is dismissed at the admission stage itself.

(Sunil Dutta Mishra, J)

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