

IN THE HIGH COURT OF ORISSA, CUTTACK

R.S.A. NO. 123 OF 2007

In the matter of an appeal under section 100 of the Code of Civil Procedure assailing the judgment and decree passed by the learned Addl. District Judge, Bhadrak in Title Appeal No.36 of 1999-I confirming the judgment and decree passed by the learned Civil Judge (Senior Division), Bhadrak in Title Suit No. 246 of 1993.

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Mahesh Chandra Das :::: **Appellant**

-:: VERSUS ::-

Danbir De Sarkar & Others :::: **Respondents**

Appeared in this case by Video Conferencing Mode)

For Appellant :::: M/s. S.P. Mishra, S. Mishra B. Mohanty, S.Nanda Miss. S. Misra. S.S. Satapathy, B.S. Panigrahi & A.K. Dash, Advocates

For Respondents :::: M/s. B.H. Mohanty, R.K. Nayak, D.P. Mohanty, T.K. Mohanty, P.K. Swain, & M. Pal, Advocates

CORAM:
MR. JUSTICE D.DASH

DATE OF HEARING:: 12.01.2021::DATE OF JUDGMENT::21 .01.2022

The Appellant by filing this Appeal under Section-100 of the Code of Civil Procedure (hereinafter called as 'the Code') has assailed the judgment and decree passed by the learned Addl. District Judge, Bhadrak in Title Appeal No.36 of 1999.

By the said judgment and decree, the appeal filed by the present Appellant as the unsuccessful Plaintiff having been dismissed the judgment and decree passed by the learned Civil Judge (Senior Division), Bhadrak in Title Appeal No.246 of 1993 in non-suiting the Plaintiff in his suit claiming Specific Performance of Contract against the Defendants (seven in number) have been confirmed. It is pertinent at this stage to state that the Plaintiff initially while instituting the suit had arraigned the Respondent No.1 as the sole Defendant and later, Respondent Nos.2 to 7 have been impleaded as the purchasers of the property in question from said Defendant No.1. All these defendants have however contested the suit by filing joint written statement and so also together have defended the judgment and decree passed by the Trial court in the First Appeal.

2. For the sake of convenience, in order to avoid confusion and bring in clarity, the parties hereinafter have been referred to as they have been assigned with the position in the Trial Court.

3. Plaintiff's case is that the Defendant No.1 is the owner in possession of the suit land being in need of money, had entered into an agreement with the Plaintiff to sale the suit land for a consideration of Rs.50,000/- (Rupees fifty thousand), which was agreed between them as it was the then prevailing market price. It is stated that the Defendant No.1 being in urgent need of money requested the Plaintiff to execute the sale-deed on his return from Kolkata where he was then staying. The Plaintiff states to have paid the consideration of Rs.50,000/- to the Defendant and in turn, Defendant No.1 executed a receipt to that affect. That was on 20.06.1993. It is stated that Defendant No.1 having received the consideration as aforesaid from

the Plaintiff, delivered the possession of the suit land to the Plaintiff and it was in pursuance of the said agreement for sale of the suit land by the Defendant No.1 to the Plaintiff for that agreed consideration. The Defendant No.1 then proceeded to Kolkata informing Defendant No.1 that on his return within a fortnight that he would execute the sale-deed and register the same.

It is stated that on 06.07.1993, the Plaintiff received a notice sent by the Defendant No.1 wherein he admitted to have received sum of Rs.50,000/- from the Plaintiff. It is however stated that during negotiations, Defendant No.1 was insisting that he be paid with a sum of Rs.5,00,000/- (Rupees five lakh) towards consideration and it was ultimately agreed at Rs.4,00,000/- (Rupees four lakh) from out of which he had received of Rs.50,000/- as advance consideration. The Plaintiff averred that such statement are all false and fabricated and was in order to avoid to sale the suit land to the Plaintiff in pursuance of the agreement that Defendant No.1 had entered into with the Plaintiff. The Plaintiff then gave a befitting reply to the said notice and called upon the Defendant No.1 to execute the sale deed within 15 days and register the same, But the Defendant No.1 remained silent. The Plaintiff in the month of September, 1993, received a notice from the Court as the Defendant No.1 had filed one Caveat application under section-148 of the Code. Having received the notice, the Plaintiff became sure that the Defendant No.1 is not in a mode to execute any sale deed in pursuance of the agreement that he had entered into with the Plaintiff. So, he filed the suit against the Defendant. Thereafter when it came to the notice of the Plaintiff that the Defendant No.1 had sold the suit land to Defendant Nos. 2 to 7; they have been impleaded as parties.

With all these pleadings, the Plaintiff prayed for a decree for Specific Performance of Contract against the Defendants directing them to execute the sale deed in respect of the suit land under 3 plots appertaining to Khata No.787 situated in mouza: Basudevpur, in total measuring Ac.1.00 decimal.

The Defendants in their written statement have denied that there was an agreement for sale of the suit land between the Plaintiff and Defendant No.1, fixing the consideration at Rs.50,000/-. It is stated that said sum of Rs.50,000/- was received towards advance consideration and the full and final consideration for the suit land measuring Ac.1.00 decimals had been fixed at Rs.4,00,000/-. The factum of delivery of possession of the suit land to the Plaintiff upon receipt of a sum of Rs.50,000/- has been denied. It is stated that since the Plaintiff thereafter played hide and seek, the Defendant No.1 had served the Lawyer's notice upon him giving him an opportunity to purchase the land in question. But that having been distortedly responded to, the Defendant No.1 being in need of the money for the treatment of his ailing mother sold the suit land in parts to Defendant Nos.2 to 7.

4. The Trial Court on the above pleadings framed as many as five issues. Answering issue nos.2 to 4 first which cover the examination as to if there was a completed contract of sale of the suit land between the parties and that there has been execution of a completed contract, which is specifically enforceable; upon examination of evidence and their evaluation, the Trial Court has held that there was no completed contract for sale of the suit land between the Plaintiff and Defendant No.1. Having

said so, the Trial Court has found that the Plaintiff has held that the Plaintiff has not entitled to obtain to decree for Specific performance of Contract for sale of the suit land as prayed for. However, the Defendant No.1 has been directed to refund the advance sum of Rs.50,000/- with interest to the Plaintiff.

Plaintiff being thus unsuccessful before the Trial Court and having filed the Appeal since has not been able to get any result in his favour in obtaining the relief of specific performance of contract has filed this Appeal. The Plaintiff has however been granted with the alternative relief of refund his sum of Rs.50,000/- from the Defendant No.1 with interest @ 12% per annum with effect from 28006.1993 till payment.

5. The Appeal has been admitted on the following substantial question of law:-

(i) Whether the Courts below by not properly construing Ext.1 (Money Receipt) together with Exts.2 & 3 (Lawyer's notice by the Plaintiff and its reply by Defendant No.1) have fallen in error in recording the finding that there being no completed contract, the same is not specifically enforceable?

6. Mr. S.P. Misra, learned Senior Counsel for the Appellant submitted that the Courts below ought to have construed the money receipt, Ext.1, the Lawyer's notice sent by the Plaintiff to Defendant No.1 and its reply (Exts.2 & 3) as to have constituted a completed contract and is thus, capable of being specifically enforced. He submitted that on conjoint and harmonious reading of Exts.1, 2 and 3 clearly show that it is the Defendant No.1 who had agreed to sale the suit land to the Plaintiff for consideration

of Rs.50,000/- and he had received full consideration on 20.06.1993 putting him under obligation to execute the sale deed and register the same in completing the transaction agreed to on his return from Kolkata within a fortnight. He therefore, submitted that substantial question of law must receive answer in favour of decreeing the suit filed by the Plaintiff granting him the principal relief of Specific Performance of Contract and not the alternative relief which has been granted.

7. Mr. D.P. Mohanty, learned Counsel for the Respondents submitted all in favour of the findings rendered by the Courts below. According to him, the receipt Ext.1 is having no reference to the agreed consideration and it is also not having any reference as to the time period within which the sale-deed was to be executed and registered as also nothing is stated therein about giving of delivery of the possession of the suit land by the Defendant No.1 in pursuance of the said agreement for sale of the suit land. He also submitted that the factum of possession of the suit land by the plaintiff has not been so indicated in the reply given by the Plaintiff to the Lawyer's notice sent by the Plaintiff. So under such factual settings, the Courts below have rightly held that there was no completed contract between the parties for sale of the suit land as capable of being specifically enforced.

8. Keeping in view the submission made, I have carefully gone through the judgments passed by the Courts below. I have also perused the documents Exts.1, 2 and 3.

Before going to dwell upon the statement of the learned Counsel for the Parties in finding out the answer to the substantial question of law, it is

felt apposite at the first instance to take note of the first document proved from the side of the Plaintiff, which has been marked as Ext.1. That is a money receipt and admittedly, it has been executed by the Defendant No.1. The Defendant No.1 has received the same on receipt of Rs.50,000/- from the Plaintiff for selling of his land to the plaintiff. The contents of Ext.1 read as under:-

“Received this sum of Rs.50,000/- (Rupees Fifty thousand) only as an advance from Sri Mahesh Chandra Das, son of Sri Bishhu Ch. Das, At/P.O. - Charamani for selling of my land bearing Khata no.787 and Plot No.571/572/573, mouza Basudevpur of area Ac.1.00 on dt. 20.06.1993”. (Emphasis supplied)

Sd/-

*Banibrata De Sarkar,
20/6/93.*

(Above signature is given over two affixed Revenue stamps each worth of Rs.0.20 paise)

*Banibrata De Sarkar,
S/o. Biswanath De Sarkar,
20/6/93”*

9. The Defendant No.1 admits to have given this receipt. It is his case that upon negotiation with the plaintiff for sale of the suit land despite insistence from his side that the Plaintiff should pay consideration of Rs.50,000/-, ultimately it was agreed that he would sale the suit land to the plaintiff for a consideration of Rs.4,00,000/-, which he would pay. This fact being denied by the Plaintiff in the reply that he has given to the

Defendant No.1; it is stated that the Defendant No.1 had never wanted to sale the suit land of Rs.5,00,000/- and that finally it was not agreed upon that he would purchase the suit land from the Defendant No.1 for consideration of Rs.4,00,000/-. Most importantly, it has been categorically stated by the Plaintiff that the agreement between him and the Defendant No.1 was that Defendant No.1 would sale the suit land to the Plaintiff for consideration of Rs.50,000/- and that has been paid.

10. The Plaintiff and Defendant No.1 are literate knowing to read and write English and it appears that they to great extent are conversant with the transactions relating to the immovable properties. The Defendant No.1 appears to have written out the very Ext.1 in his own hand and his hand writing is also of very good standard. The essential ingredients of agreement to sale immovable property are (i) Identity of the proposed vendor and proposed vendee, (ii) description of the property, (iii) amount of consideration agreed upon, (iv) time within which agreement is to be performed , and as to what by whom and (v) advance consideration, or calculation in full as the case may be, paid by the proposed vendee to the proposed vendor.

In the instant case, Ext.1 is the base document for the Plaintiff and it is the foundation of his claim. The Lawyer's notice given to the Plaintiff and its reply given by the Plaintiff to the Defendant No.1 the so-called agreement; wherein the Defendant No.1 when states his claim as to the agreed consideration, the Plaintiff totally denies the same and it is his specific case that the entire consideration as agreed was Rs.50,000/- which had been totally paid on 20.06.1993 as evident from Ext.1. If that is the

case, it is not understandable and does not strike to mind, as to why Ext.1 states that it was mere advance which can be seen from the emphasis supplied while re-producing the contents of Ext.1. The reply of the Plaintiff to Ext.2 which is Ext.3 reads:-

“In fact the consideration money, for the land in question was fixed at Rs.50,000.00/- which was given in advance by my client to your client.”

This shows from the reply that the stand that the entire consideration money had been paid before hand is contrary to the contents of Ext.1, which is very much relied upon by the Plaintiff. In that Ext.1, it has been specifically written that a sum of Rs.50,000/- was received by the Defendant No.1 ‘as an advance’ and ‘not in advance’ which make difference of irreconcilable nature. There is no mention of total consideration and its payment in full. So, the mischief of the part of the Plaintiff is inferable that having obtained Ext.1, the mind was directed to grab the property without making further payment of consideration. In my view, the Plaintiff has not approached the Court with clean hands. A careful reading of these documents exhibited by the Plaintiff would reveal that his claim now in the suit that the consideration fixed for the suit land was Rs.50,000/- is not correct and as such acceptable. This alone is enough to non-suit the Plaintiff.

Furthermore, the receipt, Ext.1 has no reference as to within what probable time the transaction would finally be effectuated by execution of the sale deed and its registration and also if the possession of the suit land

was on that day has been delivered by the Defendant No.1 to the Plaintiff which he now claims. This being very important act and conduct of the parties in pursuance of the agreement, its non-mention/indication in Ext.1 as also the Plaintiff himself having not stated so that he is in possession of the suit property in the reply i.e. Ext.3 given by his Lawyer to the Defendant No.1 upon receipt of Ext.2 makes his case of claim of possession of the suit property wholly unbelievable.

In view of the aforesaid discussion and reasons, the answer to the substantial question of law is recorded against the Plaintiff and accordingly, it is held that this Appeal is liable to be dismissed.

11. In the result, the Appeal stands dismissed. The parties are directed to bearing their respective costs all throughout.

12. As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No. 4587 dated 25th March, 2020 as modified by Court's Notice No. 4798 dated 15th April, 2021 and Court's Office order circulated vide Memo No.514 and 515 dated 7th January, 2022.

***D. Dash,
(Judge).***