**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**FIRST APPEAL No.141 of 2017**

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Mr. Anis Ahmad, Son of Late Md. Akhtar, Resident of 32-Bright Street, P.S.- Karaya, Kolkata- 700017.

... ... Appellant/s

Versus

Mrs. Rahat Ehtesham, Wife of Md. Abu Darda Mallick, Resident of MohallaP.O.- Sonshari, P.S.- Mufassil, District- Nawadah, presently residing at Mohalla- New Azimabad Colony, P.O.- Mahendru, P.S.- Sultanganj, District- Patna Near Redient School Patna.

... ... Respondent/s

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**Appearance :**

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| For the Appellant/s | : Mr. Amarendra Narayan, Advocate<br>Mr. Sudhir Kumar Raj, Advocate<br>Dr. J.K.Verma, Advocate<br>Mr. Deepak Kumar, Advocate |
| For the Respondent/s | : Mr. Jitendra Kishore Verma, Advocate<br>Mr. Anjani Kumar, Advocate<br>Mr. Vivek Anand, Advocate<br>Mr. Shreyash Goel, Advocate |

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**CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY**
**C.A.V. JUDGMENT**

**Date : 04-04-2023**

Heard learned counsel for the appellant and learned counsel for the respondent.

2. The instant appeal has been preferred against the judgment dated 7.8.2017 and decree dated 19.8.2017 passed in Title Suit no.52 of 2011 by the learned Sub Judge IV, Patna City, Patna whereby the suit filed by the plaintiff for specific performance of contract was decreed on contest against the defendant.

3. Against the judgment and decree passed by the learned court below, the defendant in the title suit has preferred the instant appeal. For the sake of convenience, the parties are being referred to as plaintiff/plaintiff-respondent or defendant/ defendant-appellant.

4. The case of the plaintiff in brief is that the defendant is the owner of a piece of land measuring an area of 10 *dhurs* containing a single storey *pucca* house, fully described in Schedule I of the plaint appertaining to C.S. Plot no.657 and 558 (part), khata no.613 and 614 respectively, sub plot 16A Holding no.35 situated at Mohalla New Azimabad Colony, East Sector-B, P.O.-Mahendru, Police Station-Sultanganj in the district of Patna and hereinafter referred to as the suit property. It is the case of the plaintiff that the defendant who was known to the plaintiff since long fell in dire need of money in the month of June, 2009. Not having been able to arrange for the same from any of his sources, he decided to sell his house and with this desire approached the plaintiff. The defendant also expressed his intention publicly in the market and got the same canvassed through his man. Different intending purchasers approached the defendant and negotiations took place. The plaintiff through her husband also approached the defendant. It

is the case of the plaintiff that save and except the plaintiff, none of the others showed their readiness to pay the demanded consideration amount. No one was ready to pay a sum of Rs.4 lacs by way of advance. The plaintiff was ready and willing to pay total consideration amount of Rs.11 lacs for the suit property and was also ready to pay a sum of Rs.4 lacs by way of advance out of the total price of Rs.11 lacs. On the acceptance by the defendant of the consideration advance of Rs.4 lacs by the plaintiff and her husband, the contract was finally concluded on 3.6.2009. The plaintiff paid a sum of Rs.1 lakh in cash and Rs.3 lacs by a Bank draft issued in the name of the defendant.

5. It is further case of the plaintiff that as the defendant was not able to search out a non-judicial stamp worth Rs.100 for the sale agreement on 3.6.2009, the plaintiff herself purchased the same on 5.6.2009 and made the same available to the defendant for getting the sale agreement scribed and typed on the same. The defendant himself prepared the sale agreement and the same was executed on 6.6.2009. A photocopy of the same was kept by the defendant while the original was given to the plaintiff with the assurance that the registered sale deed would be executed on or before 6.3.2010 on receipt of the balance consideration money. It is the case of the plaintiff that

she and her husband being old acquaintance of the defendant did not suspect any foul play. The plaintiff always kept herself ready to pay the balance consideration amount of Rs.7 lacs and to get the sale deed executed and registered in her favour. In the meantime, the defendant once again approached the plaintiff and her husband and requested for a further sum of Rs.3 lacs out of the balance consideration amount of Rs.7 lacs. In good faith, the plaintiff obtained two Bank drafts in favour of the defendant and paid a sum of Rs.2 lacs by Bank draft no.010141 drawn on the Canara Bank and Rs.1 lac by Bank draft no.037842 drawn on the Axis Bank Limited. On 26.9.2009, the defendant having received the said amount made endorsement in his pen and signed on the foot of page no.2 of the sale agreement dated 6.6.2009.

6. It is the case of the plaintiff that on asking about the execution and registration of the sale deed, on receipt of the balance consideration amount of Rs.4 lacs, the defendant again assured to execute the registered sale deed before the agreed date of 6.3.2010. The plaintiff and her husband, since February, 2010 continued to pursue the defendant but the defendant continued to evade them on one pretext or the other. He disclosed that the title deed of the suit property was lying in the

office in view of the fact that the sum of Rs.40,000/- to Rs.45,000/- of the building loan advance taken by him remained unpaid and was liable to be deducted from his monthly salary. The defendant continued to linger the matter of execution and registration of the sale deed in favour of the plaintiff on receipt of the balance consideration amount inspite of the fact that the plaintiff has all along been ready and willing to perform her part of the contract. Finally suspecting foul play, the plaintiff got a legal notice sent calling upon the defendant to complete the formalities of sale of the house within a period of 15 days. It is the case of the plaintiff that the cause of action for the suit arose on different dates including the dates when the contract was concluded, the advance paid, the agreement executed and on different dates when inspite of the request by the plaintiff, the defendant continued to evade the execution of the sale deed on one pretext or the other and finally intimated about the documents with respect to the suit property lying in his office on account of non-payment of the house building advance received by him. As such, the plaintiff proceeded to file Title Suit no.52 of 2011 in the Court of learned Sub Judge I, Patna City for the following reliefs:

*"(i) That on adjudication of the controversy involved*

*in the suit, a decree for specific performance of contract in persuance of sale agreement dated 6.6.2009 be passed in favour of the plaintiff & the defendant be directed to execute & register the absolute sale deed concerning the suit property in favour of the plaintiff within a reasonable time fixed by the court on receipt of balance consideration money of Rs. 4 lacs kept always ready with the plaintiff but on failure of the defendant in executing & registering the sale deed in persuance of the order of the learned court & within the time accorded on receipt of balance consideration money of Rs. 4 lacs, the plaintiff be directed to deposite the balance consideration money in the Nazarat of the court & absolute sale deed be executed & registered in favour of the plaintiff through the process of the court & the plaintiff be put in possession thereof at the complete cost & expenses of the defendant.*

*(ii) That in case, there be any legal or technical hinch in grant of relief No.1, a money Decree of Rs. 7 lacs with interest @18% PA be passed in favour of the Plaintiff against the defendant, from the date of sale Agreement till its actual payment back to the plaintiff by the defendant.*

*(iii) That by an order of ad-interim injunction, the defendant be restrained from alienating or encumbering the same in anyway or causing any loss to the same till the disposal of the suit.*

*(iv) That the cost of the cost & unnecessary loss causing to the plaintiff towards payment of rent in Patna be also allowed to the plaintiff as against the*

*defendant from the date of filing till it final disposal @ 1800/= per month.*

*(v) That any other relief/reliefs to which the learned court deem fit & proper be also awarded to the plaintiff as against the defendant."*

7. The sole defendant appeared in the suit and filed his written statement. The case of the defendant is that the suit is not maintainable, barred under the provisions of law of limitation, Specific Relief Act and is bad for the principles of waiver, estoppel and acquiescence. It is also bad for non-joinder and mis-joinder of necessary parties. The plaintiff has no cause of action for the suit and the same has not been properly valued.

8. Further case of the defendant is that the defendant is the owner of the suit property described in Schedule I of the plaint. The defendant was not in need of money in the month of June, 2009 nor did he invite or canvass for money nor did he want to sell his house at Patna. As per the defendant, the fact is that the plaintiff's husband came to the defendant and asked him to keep a sum of Rs.4 lacs in safe custody and put his signature on a hand written draft saying that it is as a security against the money and is in the form of a receipt of money of his house at Patna. As per the defendant, the plaintiff's husband went away

with the written paper. The defendant told the plaintiff's husband that he did not want to sell the aforesaid property since it was mortgaged and the defendant was not in need of money. As per the defendant, the plaintiff's husband orally assured that he will take the money after sometime and it was due to some unavoidable reason that he did not want to keep the said money in his house. As per the defendant's case, it was the plaintiff's husband who wanted to keep the money secretly and the defendant being an old acquaintance, he accepted the offer of the plaintiff's husband. It was in this manner that the plaintiff deposited a sum of Rs.4 lacs with the defendant on 6.6.2009 and got the signature of the defendant on a piece of paper got prepared by him. The defendant put his signature without reading the contents of the same. It is further case of the defendant that he did not prepare nor read the contents of the alleged *baibayana* deed. The document is a result of fraud and forgery by the plaintiff's husband. The defendant was and is always ready to return back the money to the plaintiff's husband without interest as the same was not demanded by the defendant but was given to him for the same to be kept in safe custody. The defendant never took a sum of Rs.7 lacs as earnest money out of the alleged consideration amount of Rs.11 lacs against the suit property. It is a fact that the defendant constructed his house over the suit land by taking loan from the Food Corporation of India ('FCI' in short) wherein he was employed and by keeping his original sale deed with respect to the suit property. The loan not having been fully paid and the same being proportionately deducted from his salary, the original sale deed is still kept with the FCI as security. The defendant further states in his written statement that on receipt of legal notice from the plaintiff, he engaged an Advocate and instructed him to give a reply. As the defendant was in hurry he did not read the contents of the reply notice prepared by his Advocate and the defendant put his signature on the reply notice without reading the contents thereof. On subsequently learning that claim of the plaintiff had been admitted to some extent, he was surprised. He confronted his Advocate at Kolkata and on enquiry it transpired that the Advocate at Kolkata and the husband of the plaintiff are resident of the same district of Nawada in Bihar and were in collusion. The defendant states that he is ready to return back the amount of Rs.7 lacs. The plaintiff is not entitled to any relief prayed in the suit and thus it was prayed that the suit be dismissed with heavy cost and he be given compensation.

9. Having perused the contents of the plaint and the

written statement, the learned trial court was pleased to frame the following issues in the suit:

1. Is the suit maintainable as framed?
2. Has the plaintiff got valid cause of action for the suit?
3. Whether the suit is barred by the principles of estoppel, waiver and acquiescence?
4. Is the suit barred by the law of limitation?
5. Whether the suit is barred by the principle of Specific Relief Act?
6. Whether the suit is bad for non-joinder and misjoinder of necessary parties?
7. Has the plaintiff properly valued the suit property and court fee paid by the plaintiff is insufficient?
8. Whether the Baibeyana was executed by defendant on 6.6.09 on receiving a sum of Rs 4,00,000/- as earnest money out of a sum of Rs. 11,00,000/- the consideration money?
9. Whether the plaintiff or her husband handed over a sum of Rs. 4,00,000/- to the defendant for keeping it in safe custody and further the plaintiff gave a sum of Rs.3,00,000/- through two cheques for keeping it in safe custody subject to be returned when demanded by the plaintiff?
10. Whether the suit house was constructed on taking loan from food corporation of India by the defendant?
11. Whether the sale agreement dt. 6.6.09 legal and genuine and binding upon the defendant?
12. Whether the plaintiff has all along been ready

and willing to perform his part of contract?
13. Whether the plaintiff is entitled to get the relief as prayed for?
14. To what other relief or reliefs if any the plaintiff is entitled for."

10. It was submitted by learned counsel appearing for the defendant-appellant that the judgment and decree passed by the learned Court below is without any basis and perverse in law. The learned Court below admitted the alleged deed of agreement dated 6.6.2009 in evidence as forming the foundation of the impugned judgment which is in fact an error of record. Not only the document was marked as Exhibit-6, but other parts of the document ie the signature etc were also marked as Exhibits- 1, 1/A, 1/B, 1/C, 1/D and 1/E. The learned trial Court misdirected itself in passing the impugned judgment and decree holding the document dated 6.6.2009 as agreement to sell. The defendant-appellant never accepted the alleged document dated 6.6.2009 (Exhibit-6) to be more than a money receipt in token of a friendly transaction of money. The defendant in unambiguous words denied to accept it as an agreement to sell and expressed his inability to sell his house at Patna as he was having no necessity to sell the same. Further the defendant was

not free to alienate the property without obtaining the consent of the mortgagee. It was further submitted that section 20(2)(a), (b) and (c) of the Specific Relief Act requires proper consideration before decreeing a suit. The considerations for discretionary remedy are different from legal remedy. Learned counsel in support of his contentions relied on the judgment of the Hon'ble Supreme Court in the case of Parakunnan Veetill Joseph's Son Mathew v. Nedumbara Kuruvila's Son & Ors. [AIR 1987 SC 2328] and in the case of Smt. Mayawanti vs Smt. Kaushalya Devi [(1990) 3 SCC 1]. Learned counsel further submitted that the defendant-appellant having denied to have entered into a contract for sale of his house at Patna, the alleged deed dated 6.6.2009 (Exhibit-6) could not be construed to be a document for agreement to sell. The said agreement does not contain the signature of the plaintiff which is mandatorily required for any agreement. In support of his contention learned counsel relied on the judgment of the Hon'ble Supreme Court in the case of Aloka Bose vs Parmatma Devi And Others [(2009) 2 SCC 582]. Further referring to section 92 of the Indian Evidence Act, 1872 it was submitted that when the terms of any contract have been reduced to the form of a document, no evidence of any oral agreement or statement is to be admitted as between the parties to any such instrument for the purpose of contradicting, varying, adding to or subtracting from the terms. In support of this contention learned counsel for the defendant-appellant relied on the judgment of the Hon’ble Supreme Court in the case of Nanjappan vs Ramasamy & Anr. [2015 (2) PLJR 420 (SC)]. Further referring to the judgment of the Hon’ble Supreme Court in the case of H. V. Nirmala vs. Karnataka State Finanacial Corporation & Ors. [(2008) 7 SCC 639] learned counsel submitted that the aforesaid document is not registered and it can be admissible as evidence of agreement to sell under section 49 of the Indian Registration Act and shall not have any affect for the purpose of section 53A of the Transfer of Property Act. In case a document is received as evidence of contract in a suit for Specific Performance, its genuineness, validity and binding nature will have to be adjudicated. Learned counsel further submitted that there is a distinction between signing and execution. By merely signing an instrument, one cannot be held to have executed the same. The Hon’ble Supreme Court in the case of Veena Singh (Dead) through Legal Representative Vs. District Registrar/ Additional Collector (F/R) & Anr. [(2022) SCC Online SC 593] observed that section 35(1)(a) of the Indian Registration Act suggests that execution happens when a person’s signature on the document is accompanied by their full consent to the contents of the document which they have understood before signing it. So far as the pleadings and evidence of the instant case are concerned, the defendant-appellant signed the alleged document under the impression that it was merely a receipt for safe keeping of the money being given. Further the defendant-appellant neither was in any need of money nor did he want to sell the property. Lastly, he could not even sell the property for the reason that the property was mortgaged and he did not have permission from the mortgagee. Thus, there was no valid and enforceable contract and in absence of the same no order for Specific Performance of Contract could be passed, as has been held by Hon’ble Supreme Court in the case of Satish Kumar vs Karan Singh & Anr. [2016 (2) PLJR 246 (SC)]. Thus, the suit was fit to be dismissed at the threshold itself in terms of Order VII Rule 7 of the Civil Procedure Code. The plaintiff cannot succeed on the weakness of the defendant to prove his case. The plaintiff and her husband started to threaten and criminally intimidate the defendant and thus he filed applications before the District Magistrate, the Senior S.P., Patna, and the local police station which are Exhibits- 5, 5/A, 5/B. It was finally submitted that the learned trial Court misdirected itself in holding that Exhibit-6 is an admitted piece of document by both the parties, which is not the case. Findings recorded on other issues are also without any basis. There was no material on record to show the element of readiness and willingness on part of the plaintiff to get the sale deed executed. Thus, it was submitted that the learned trial Court committed an error in passing the judgment and decree impugned, the same be set aside and the instant appeal be allowed.

11. Learned counsel appearing for the plaintiff-respondent submitted that section 17(1A) of the Registration Act read with section 53A of the Transfer of Property Act, in view of their amendments in 2001 required registration of an agreement to sell only when possession is delivered and accepted under the agreement to sell and that too for limited purposes of protection under section 53A of the Transfer of Property Act and not otherwise. Learned counsel for the plaintiff distinguished the judgment in the case of Gurbachan Singh vs Raghubir Singh [AIR 2010 P&H 77] relied on, on behalf of the defendant-appellant by referring to paragraph no.22 thereof and further relied on the judgment in the case of Binay Krishna vs. Ashok Kumar & Ors. [2009 (4) PLJR 385]. It was further submitted

that judgment relied-on on behalf of the appellant ie in the case Satish Kumar (supra) was distinguishable because of the uncertainties surrounding the agreement and the Hon'ble Supreme Court having held the agreement to be un-enforceable because of defect and vagueness.

12. With respect to the contention of the appellant that the agreement was also not enforceable as only one party ie the vendor has signed the agreement, learned counsel relying on the judgment in the case of Rajendra Pratap Singh v. Rameshwar Prasad [AIR 1999 SC 37] submitted that the Hon'ble Supreme Court held therein that signing and execution are different concepts and mere signing by only one of the parties does not mean that both the parties have not executed the document and execution means involvement in the process and not actual signing only. So far as the present case is concerned, section 53A of the Transfer of Property Act requires signing by only the vendor which is present in the instant case. There is no requirement in law that both the parties should sign an agreement to sell. In fact decree of Specific Performance can be granted with respect to even oral agreement to sell.

13. With respect to the sale not being permissible because of the existing mortgage, it was submitted by learned

counsel appearing for the plaintiff-respondent that the same is a false plea, not having been mentioned in the agreement to sell. There is no clause to the effect that the agreement to sell was subject to condition that the sale will take place only after redemption of mortgage. There being no such condition, the same cannot be read into the agreement to sell in view of sections 91 and 92 of the Evidence Act. Learned counsel submitted that adding of such condition to a written contract is impermissible in view of the decision of the Hon'ble Supreme Court in the case of Nanjappan (supra) and Placido Francisco Pinto (D) By Lrs. & Anr. vs. Jose Francisco Pinto & Anr. [2021 (6) BLJ 461]. Further there is no statutory provision which takes away the right of the owner of a property to sell or agree to sell his property if he has already mortgaged the property. There is no bar in selling a mortgaged property. In view of section 13 of the Specific Relief Act, the vendee can require the vendor to first redeem the property and then execute and register the sale deed if the vendor has not disclosed about the mortgage prior to agreement to sell. Learned counsel submitted that the contention of the defendant-appellant of signing the document without reading the contents is a false plea as the defendant signed the same not once but on two occasions. Further the allegation of collusion of his counsel with the husband of the plaintiff was a bald plea without the defendant substantiating the same or examining the concerned advocate. The defendant (DW-1) in paragraph no.22 of his cross-examination has admitted that he has passed B.Com and up till B.A., the subjects were being taught in English language. Thus, he had sufficient knowledge of English to understand the contents of the document.

14. Relying on the judgment of the Hon'ble Supreme Court in the case of Nagindas Ramdas v. Dalpatram Iccharam alias Brijram and others [AIR 1974 SC 471], learned counsel for the plaintiff-respondent submitted that in paragraph nos. 9 and 10 of the written statement there is admission of the defendant and the same is conclusive and it stands on a higher footing than evidentiary admission and are fully binding on the defendant.

15. Learned counsel for the plaintiff-respondent submitted that once the signature on the agreement to sell and acceptance of Rs.7 lacs is admitted by the defendant in respect of the defendant's house, the burden to prove fraud and misrepresentation is not discharged in terms of Order VI Rule 4 of the Civil Procedure Code. The only stand of the defendant of ignorance of the contents of the document cannot be accepted to

absolve the defendant from his duty to perform his part of the agreement. Learned counsel relied on the judgment in the case of Placido Francisco Pinto (supra) and Kirpal Kaur & Anr. vs. Ritesh & Ors. [2022 (3) BLJ 277 (SC)].

16. Learned counsel for the plaintiff-appellant further submitted that neither there is any defense nor pleading to the effect that the agreement to sell which was entered into with the consent of the parties was not intended to be acted upon, instead the defense is that the defendant never knew as to what were the contents of the document. Relying on the judgment in the case of Ramashray Singh & Ors. vs. Balmiki Pd. Singh & Ors. [2007 (1) PLJR 443] learned counsel submitted that the signature on agreement to sell having been admitted, the initial onus to prove that such agreement was entered into stands discharged and the onus shifts on the defendant to adduce evidence to impeach the document on other grounds including fraud etc.. Learned counsel submitted that the Hon'ble Supreme Court has held that claim for refund of earnest money is an alternative relief which the plaintiff is entitled to seek in the event the decree for Specific Performance cannot be granted for any reason and further there is no infirmity in claim of alternative relief of refund. It has further been held in Zarina Siddiqui vs

A.Ramalingam @ R.Amarnathan [(2015) 1 SCC 705] that ordinarily the price rise during pendency of suit cannot by itself be a ground to refuse Specific Performance of Contract. Further in a sale of immovable property as in the present case, time is never the essence of a contract. On the point of readiness and willingness, it was contended that the same stands proved from the evidence of the plaintiff (PW-1) and her husband (PW-3) and that the defendant never seriously contested this aspect in the pleading nor denied the same. Learned counsel relied on the judgment in the case of Union of India vs. Ibrahim Uddin & Anr. [2013 (1) PLJR 48 (SC)]. Learned counsel finally submitted that with respect to the relief of possession in Specific Performance, besides the appellate Court being able to rectify the same, such relief is implicit in a suit for Specific Performance and deem to have been granted even if not specifically granted as has been held in the case of Babu Lal vs M/s Hazari Lal Kishori Lal & Ors. [AIR 1982 SC 818], Bhanu Pratap Sah vs Bhagmuni Devi (substituted) & Ors. [1992 (1) PLJR 118] and Aibunnisha vs. Masrur Alam [2005 (2) PLJR 205]. It was finally submitted that in view of the facts and circumstances of the case, there is no merit in the appeal and the same be dismissed.

17. Four witnesses were examined on behalf of the plaintiff namely Rahat Ehtesham (PW-1, the plaintiff herself), Md. Shafi (PW-2), Md. Abu Darda Mallick (PW-3, the plaintiff's husband) and Md. Shaheb Akhtar (PW-4). A number of documents were exhibited on behalf of the plaintiff which were the writing and signature of defendant on *baibeyana* dated 6.6.2009 (Exhibit-1), signature of the defendant Md. Shafi and Reshmi Ahmad on the *baibeyana* (Exhibits 1/A, 1/B, 1/C, 1/D and 1/E), legal notices dated 25.11.2010 and 27.1.2011 (Exhibits- 2 and 2/A), postal receipts (Exhibits- 3 and 3/A), reply notice of Anis Ahmad dated 7.2.2011 and 15.3.2011 (Exhibits- 4 and 4/A), legal notice dated 7.2.2011 in three pages with defendant's signature (Exhibits- 5, 5/A and 5/B) and the entire contents of the *baibeyana* dated 6.6.2009 (Exhibit-6).

18. On behalf of the defendants also four witnesses were examined namely, Anis Ahmad (DW-1, the sole defendant), Md. Fahimuddin (DW-2), Sheo Nandan Prasad (DW-3) and Dilip Kumar (DW-4). The documents exhibited on behalf of the defendant were the three postal receipts (Exhibits- A, A/1 and A/2) of the letter sent by the defendant to the administrative authorities.

19. Of the witnesses examined on behalf of the

plaintiff, Rahat Ehtesham (PW-1) was the plaintiff herself while Md. Abu Darda Mallick (PW-3) was her husband. Both PW-3 as also Md. Shafi (PW-2) were witnesses to the agreement to sell (Exhibit-6). Md. Shaheb Akhtar (PW-4) was an advocate as also a prospective buyer from the defendant.

20. PW-1, the plaintiff in her deposition has stated that the defendant having fallen in need of money gave a proposal to sell the suit property. Her husband was an old acquaintance of the defendant. Having agreed to the defendant's proposals for purchasing the suit property for a total consideration of Rs.11 lacs, the plaintiff also agreed to pay an advance of Rs.4 lacs, which she paid on 3.6.2009 and the deed of sale was executed on 6.6.2009. Subsequently, as demanded by the defendant, she gave a further amount of Rs.3 lacs out of the balance consideration of Rs.7 lacs which the defendant received and again put his acknowledgement and signature on page no.2 of the agreement to sell. The plaintiff states about sending of the legal notices and categorically states that she was all along ready to perform her part of the contract of paying the balance consideration amount and for getting the sale deed executed by the defendant in her favour. This witness has identified the signatures of DW-1 and the witnesses on the deed to sell and has

also identified the writing and signature of DW-1 on page no.2 of the right to sell (Exhibit-6) on 26.9.2009.

21. PW-2 in his deposition besides supporting the plaintiff case has stated that he knows both the plaintiff and the defendant and signed the deed to sell (Exhibit-6) as a witness along with Reshmi Ahmad, wife of the defendant who also signed as a witness. This witness has identified his own signature as also the signature of the defendant (DW-1) and the wife of DW-1.

22. PW-3 who happens to be the husband of the plaintiff besides supporting the plaintiff's case has identified and proved signatures of DW-1, his own signature as also that of PW-2 and wife of DW-1. He also identifies the signature of DW-1 on page no.2 of the deed to sell and has also proved the legal notices dated 25.11.2010 and 27.1.2011.

23. PW-4, who happens to be an advocate, who was witness to the plaintiff giving Rs.3 lacs by way of a Demand Draft to the defendant who acknowledged the receipt of the same on 26.9.2009. This witness states that he was a prospective buyer of the suit property but as the amount demanded was high, the agreement did not materialize.

24. On behalf of the defendant, Anis Ahmad (DW-1)

happens to be the sole defendant himself. In his deposition besides other statements he has stated that as husband of the plaintiff did not want to keep the money in his house, he gave the same to the defendant to keep it on his behalf. He further states that on 6.6.2009 he received Rs.4 lacs of which Rs.1 lac was in cash and Rs.3 lacs was by way of Bank Draft. The husband of the plaintiff also brought a document which this defendant signed without going through the contents thereof. He further states that on 26.9.2009, the plaintiff's husband got a further amount of Rs.3 lacs by way of Draft to be kept with the defendant. Believing the plaintiff's husband this defendant kept the same and issued receipt. He states that he is ready to refund the amount of Rs.7 lacs without interest. He further states that the original sale deed of his house is kept with the FCI against the loan taken by him. With respect to the reply to the legal notice, this witness states that he signed the same once again without reading the contents thereof. It subsequently transpired that the same was drafted in favour of the plaintiff as result of conspiracy between the lawyer at Kolkata and the plaintiff's husband for the reason that both belonged to the same district. This witness states that he has not taken any advance for sale of the suit property. In his cross-examination he agreed that from

Class VIth to B.A., they were taught in the English language. He has passed B.Com.

25. So far as DW-2, DW-3 and DW-4 are concerned, DW-2 is a tenant of DW-1 in the scheduled premises, DW-3 is an acquaintance of the DW-1 whose house is 6 kms away while DW-4 work in the same office as DW-1.

26. So far as the plaintiff’s witnesses are concerned, while the witnesses have supported and proved the plaintiff’s case about the defendant arriving at an agreement with the plaintiff and her husband, they have also proved the deed to sell (Exhibit-6) executed between the parties, the witnesses signing the said document, the defendant receiving the amount, the defendant signed and the agreement was entered into, the defendant receiving further amount and also that the plaintiff was all along ready to perform her part of the contract ie to pay the balance consideration amount and to get the sale deed executed by the defendant in her favour. So far as the witnesses on behalf of the defendant are concerned, DW-2, DW-3 and DW-4 are practically strangers to the agreement. DW-1 in his examination agrees to the execution of the document, however, his only defense being that he was not aware with the contents thereof. In the opinion of the Court, while the witnesses on

behalf of the plaintiff inspire confidence, the same cannot be said about the witnesses on behalf of the defendant.

27. Heard Mr. Amrendra Narayan, learned counsel for the defendant-appellant and Mr. Jitendra Kishore Verma, learned counsel for the plaintiff-respondent.

The case of the plaintiff in brief is that the defendant is the owner and in occupation of a piece of land measuring an area of 0.5 *Kattha* containing a single story *pucca* house appertaining to C.S. Plot no.657/658 (Part), Khata nos. 613 and 614, sub-plot no. 16A, holding no. 35 situated in Mohalla New Aziambad Colony East, Sector-B, under P.S. Sultanganj in the Town and District of Patna. Complete description of the property which is hereinafter referred to as 'the suit property' has been given in Schedule-1 of the plaint.

28. It is the case of the plaintiff that the defendant having fallen in dire need of money in the month of June, 2009 decided to sell the suit property and to raise money there from. The plaintiff also approached the defendant through her husband and showed her readiness and willingness to pay a total sum of Rs.11 lacs by way of consideration for the suit property and also her readiness to pay a sum of Rs.4 lacs by way of advance. On acceptance of the advance of Rs.4 lacs by the defendant from

the plaintiff and her husband, the contract was concluded on 3.6.2009. Out of the said advance of Rs.4 lacs, the plaintiff paid a sum of Rs.1 lac in cash and Rs.3 lacs by a Bank Draft no. 734180 dated 3.6.2009 from her banker ie Canara Bank, the Draft having been issued in the name of the defendant and payable at Kolkata.

29. Further as on 3.6.2009 the defendant was not able to get the non-judicial stamp worth Rs.100/- for the sale agreement, the plaintiff herself purchased the same on 5.6.2009 and made the same available to the defendant for getting the sale agreement scribed and typed. The defendant prepared the sale agreement in his pen and executed the same on 6.6.2009. The original sale agreement was handed over to the plaintiff with the assurance that the registered sale deed will be executed on receipt of the balance consideration money of Rs.7 lacs from the plaintiff, on or before 6.3.2010.

30. It is further case of the plaintiff that not suspecting any foul play on part of the defendant, the plaintiff kept herself ready to pay the balance consideration money of Rs.7 lacs and to get the registered sale deed executed in her favour.

31. It is further contended that the defendant once again approached the plaintiff and her husband requesting for a

further sum of Rs.3 lacs out of the balance consideration amount of Rs.7 lacs. It is the case of the plaintiff that Rs.2 lacs was paid by Bank Draft no.010141 drawn on the Canara Bank and Rs.1 lac by Bank Draft no. 037842 drawn on the Axis Bank Ltd. The defendant received the same and made endorsement in his pen on the foot of page no.2 of the agreement to sell dated 6.6.2009. It is further case of the plaintiff that on asking the defendant about execution of the registered sale deed on receipt of the balance consideration amount, the defendant again assured to execute the registered sale deed but the same was not done inspite of the plaintiff and her husband pursuing the defendant. The defendant evaded the matter on one pretext or the other. The defendant finally disclosed that the title deed of the vended property is lying in the office on the ground of a building loan advance having been taken by the defendant and that a meagre sum of Rs.40,000/- to Rs.45,000/- remains unpaid and is liable to be deducted from his monthly salary. The defendant having lingered the matter, the plaintiff finally got a registered legal notice sent to the defendant on 25.11.2010 and one another legal notice sent on 27.1.2011. It is contended that the plaintiff has all along been ready with the balance consideration amount for getting the sale deed executed and registered in her favour, however the defendant has been avoiding the plaintiff and her husband and hence the suit for specific performance of contract for the relief as stated herein above.

32. It is contended by learned counsel appearing for the defendant-appellant that the defendant never accepted the agreement to sell dated 6.6.2009 as anything more than a receipt in token of a friendly transaction. Further, the defendant put his signature on the document without reading the contents of the same. With respect to this contention it may be stated here that the sole defendant who was examined as a witness (DW-1) in the suit in paragraph no.22 of his cross-examination has categorically stated that he has cleared his B.Com in the year 1983. He further states that he was imparted education from class 6 till B.A. in English language. He did his intermediate in Science subject from the Magadh University. As such, in the opinion of the Court, there remains no doubt about the literacy and capacity of the defendant to understand the English language and also his understanding the contents and meaning of the agreement to sell.

33. The next contention of the defendant-appellant is that he put his signature on the document without reading the contents of the same. The document being referred to is the

agreement to sell executed and signed by the defendant on 6.6.2009 which has been proved by the parties and marked as exhibit. Perusal of the said document would clearly show that an agreement has been entered into between the defendant and the plaintiff with respect to sale of the residential house of the defendant situated at 35, New Azimabad Colony, East, Sector-B, P.O. Mahendru, P.S. Sultanganj in the town of Patna for a total consideration of Rs.11 lacs. It has been clearly mentioned in the document that the defendant undertakes to execute a registered deed of conveyance in favour of the purchaser ie the plaintiff on receipt of the amount subject to realisation of the balance amount of consideration of Rs.7 lacs. From perusal of the document it would transpire that against the total consideration of Rs.11 lacs, Rs.4 lacs was received by the defendant as advance/earnest money. Out of the said Rs.4 lacs, the amount of Rs.3 lacs was by way of a Draft bearing no.734180 dated 3.6.2009 drawn on the Canara Bank, Patna Main Branch and payable at Kolkata while Rs.1 lac was in cash.

34. It may be stated here itself that on payment of Rs.4 lacs out of the total consideration amount of Rs.11 lacs, as described herein above, the balance of amount of Rs.7 lacs remained to be paid by the plaintiff to the defendant. On further

perusal of page no.2 of the agreement to sell (Exhibit-6) it transpires that the defendant on 26.9.2009 further received a sum of Rs.3 lacs of which Rs.1 lac was by a Bank Draft no.010141 drawn on the Canara Bank and Rs.2 lacs was by Draft no.037842 drawn on Axis Bank Ltd. Besides the details of Rs.4 lacs having been given in the agreement to sell and the same having been signed by the defendant on 6.6.2009, the receipt of the balance amount of Rs.3 lacs by the two demand drafts have also been clearly stated on page no.2 of the agreement to sell (Exhibit-6) and also signed by the defendant on 26.9.2009. Both the signatures along with the endorsements have also been marked as exhibits in the suit. Thus, from these facts it is clear that the defendant signed the agreement to sell (Exhibit-6) on 6.6.2009 as also on 26.9.2009, both after reading and fully understanding the contents thereof.

35. The case of the defendant in his written statement as also his deposition was to the effect that actually the plaintiff wanted to keep a sum of Rs.4 lacs in safe custody of the defendant and it is for this reason that the defendant put his signature on a hand written draft on the husband of the plaintiff telling him that it was as a security against the money in the form of receipt of money of his house at Patna. The defendant

further states that he did not want to sell the property. It was mortgaged, he was not in need of money and thus signed the document without reading it. As per the defendant's categorical case, all these transactions took place for the reason that the husband of the plaintiff did not want to keep the money in his house due to some unavoidable reason and wanted to keep the money with the defendant secretly. In the opinion of the Court this case/stand of the defendant falls flat on the very face of it for the reason that as per the contents of the agreement to sell, total amount of Rs.4 lacs at the time of agreement on 6.6.2009 and Rs.3 lacs subsequently on 26.9.2009 was paid by the plaintiff to the defendant. Out of this total sum of Rs.7 lacs only Rs.1 lac was paid in cash on 6.6.2009 while the remaining amount were paid by three drafts totalling Rs.3 lacs on 3.6.2009 and drafts for Rs.1 lac and Rs.2 lacs on 26.9.2009.

36. Thus, from the recital in the agreement to sell, the details of the payment and the evidence led by the parties it is clear that not only the said agreement is genuine and reliable but the story of the defendant of not having read the contents of the document, not having the intention to sell the property in question and the reason as to why the husband of the plaintiff wanted and consequently the defendant signed the said

document are all unbelievable and have no legs to stand.

37. It may also be mentioned here that as per the defendant the document was not an agreement to sell but was merely a security against the money in the form of a receipt of money for his house and the same was executed/signed by the defendant on 6.6.2009. However, then there was no occasion for the defendant to have received the sum of Rs.3 lacs by the two Bank drafts of Rs.1 lac and Rs.2 lacs and having put his signature along with the date 26.9.2009 for the reason that in this transaction there was no cash component whatsoever.

38. The next contention put forward by learned counsel appearing for the defendant-appellant is to the effect that the defendant was not free to sell the property in question as described in the agreement to sell for the reason that the same was mortgaged. It may be stated here that so far as the property in question which is subject matter of agreement to sell is concerned being mortgaged, no such statement has been made in the agreement to sell nor has the counsel for the defendant-appellant been able to show any statutory bar/restriction on sale of any mortgaged property.

39. Learned counsel appearing for the defendant-appellant next relies on the judgments in the case of Parakunnan

Veetill Joseph's Son Mathew v. Nedumbara Kuruvila's Son & Ors. [(AIR 1987 SC 2328)] and in the case of Smt. Mayawanti vs Smt. Kaushalya Devi [(1990) 3 SCC 1]. The Court does not find as to how the ratio of these judgments are of any assistance to the defendant-appellant in the facts of the case as there is no uncertainty or ambiguity in the facts of the case from the agreement to sell entered into between the parties.

40. So far as the contention of the defendant-appellant that there is no signature of the plaintiff on the document which is mandatorily required for any agreement, learned counsel for the appellant relies on the judgment of the Supreme Court in the case of **Aloka Bose vs Parmatma Devi And Others [(2009) 2 SCC 582]**. However from reading of the said judgment and more particularly paragraph no.16 thereof, the Court finds that the ratio of the judgment is more in favour of the plaintiff-respondent. In the said judgment it has been held that an agreement does not require to be signed necessarily both by the vendor and the purchaser but can also be oral. It can also be oral and can also be by exchange of communication which may or may not be signed. The same is quoted herein below for ready reference :-

*"16. On the other hand, the observation in S.M.*

*Gopal Chetty that unless agreement is signed both by the vendor and purchaser, it is not a valid contract is also not sound. An agreement of sale comes into existence when the vendor agrees to sell and the purchaser agrees to purchase, for an agreed consideration on agreed terms. It can be oral. It can be by exchange of communications which may or may not be signed. It may be by a single document signed by both parties. It can also be by a document in two parts, each party signing one copy and then exchanging the signed copy as a consequence of which the purchaser has the copy signed by the vendor and a vendor has a copy signed by the purchaser. Or it can be by the vendor executing the document and delivering it to the purchaser who accepts it."*

41. On the other hand learned counsel for the plaintiff-respondent has relied on the judgment in the case of **Rajendra Pratap Singh v. Rameshwar Prasad [AIR 1999 SC 37]** to submit that there may also be a case when only one party to the agreement would affix the signature on the document and deliver it to the other party. The Court dealt with the meaning of the word execute in paragraph no.11 which is quoted herein below for ready reference:

*"11. The word "execute" is given the meaning in*

*Black's Law Dictionary as "to complete; to make; to sign; to perform; to do; to follow out; to carry out according to its terms; to fulfil the command or purpose of." In "Words and Phrases" (Permanent Edition) the word "execute" is given the meaning as "to complete as a legal instrument; to perform what is required to give validity to." An instrument is usually executed through multifarious steps of different sequences. At the first instance, the parties might deliberate upon the terms and reach an agreement. Next the terms so agreed upon would be reduced to writing. Sometimes one party alone would affix the signature on it and deliver it to the other party. Sometimes both parties would affix their signature on the instrument. If the document is required by law to be registered, both parties can be involved in the process without perhaps obtaining the signatures of one of them. In all such instances the instrument can be said to have been executed by both parties thereto. If the instrument is signed by both parties it is presumptive of the fact that both of them have executed it, of course it is only rebuttable presumption. Similarly if an instrument is signed by only one party it does not mean that both parties have not executed it together. Whether both parties have executed the instrument will be a question of fact to be determined on evidence if such a determination is warranted from the pleadings of the particular*

> *suit. Merely because the documet shows only the signature of one of the parties it is not enough to conclude that the non-signing party has not joined in the execution of the instrument."*

Chapter-6 of the Indian Evidence Act, 1872 deals with the exclusion of oral by documentary evidence. Section 91 states about evidence of terms of contracts, grants and other dispositions of property being reduced to form of document while section 92 mentions about exclusion of evidence of oral agreement. For ready reference sections 91 and 92 of the Indian Evidence Act, 1872 is quoted herein below :

> *"**91. Evidence of terms of contracts, grants and other dispositions of property reduced to form of document.**- When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.*
>
> *Exception 1.-When a public officer is required by*

*law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.*

*Exception 2.-Wills [admitted to probate in [India]] may be proved by the probate.*

*Explanation 1.-This section applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document and to cases in which they are contained in more documents than one.*

*Explanation 2.-Where there are more originals than one, one original only need be proved.*

*Explanation 3.-The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.*

***92. Exclusion of evidence of oral agreement.-*** *When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:*

*Proviso (1).-Any fact may be proved which would invalidate any document, or which would* *entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, [want or failure] of consideration, or mistake in fact or law.*

*Proviso (2). The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.*

*Proviso (3). The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.*

*Proviso (4). The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.*

*Proviso (5)-Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved:*

*Provided that the annexing of such incident*

*would not be repugnant to, or inconsistent with, the express terms of the contract.*
*Proviso (6)-Any fact may be proved which shows in what manner the language of a document is related to existing facts."*

42. So far as the facts of the instant case are concerned, from the pleadings and both the oral and documentary evidence led by the parties, what transpires is that the defendant is not disputing the genuineness or the contents of the agreement to sell but his case consistently is that he did not read the contents of the same before signing the document. The execution of the document having been proved by the plaintiff, the signature of the defendant on the document having been admitted, the payment of the two installments of Rs.4 lacs and Rs.3 lacs having been accepted by the defendant, it is submitted by learned counsel appearing for the plaintiff-respondent that thereafter, the onus shifted and it was for the respondents to prove that it was a sham transaction. The defendant could have alleged fraud in his pleading and led evidence to that affect, however, in view of sections 91 and 92 of the Indian Evidence Act, 1872 as quoted herein above, no oral evidence can contradict the written agreement ie the agreement to sell. None

of the above was done by the defendant-appellant. Learned counsel for the plaintiff-respondent relies on the judgment in the case of **Placido Francisco Pinto** (supra) and more particularly paragraph nos. 21, 28 and 29 thereof which are quoted herein below:-

> *"21. The parties are in near relations, the appellant No.1 being the elder brother and the sale was executed to help his younger brother who was facing auction of the property gifted by the parents of the parties. Even the defendants' witnesses have admitted that there was a notice of Court auction of the property in question by beat of drum. Therefore, if elder brother had come to the help of the younger brother, discharging his debtors and executing a sale deed mentioning a nominal sale consideration, it cannot be said to be a sale without consideration. It is admitted by respondent No.1 that a sum of Rs.12,000/- was paid by the appellant No. 1 to discharge his debts. Once there is an admission of the respondent No. 1 of discharge of his debts by appellant No.1, the sale deed registered in normal course of official duties carries the presumption of correctness which cannot be said to be illegal only on the basis of feigned ignorance that his signatures were obtained on papers which respondent No. 1 and his wife did not know. The Judgment of this Court in Bellachi supports the argument raised*

*by the appellants.*

*…………………………………………….*

*28. It is beyond dispute that a sale deed is required to be registered i.e. a document required by law to be reduced to the form of a document. Therefore, no evidence of any oral agreement or statement shall be admitted for the purpose of contradicting, varying, adding or subtracting from its terms. The proviso (1) of Section 92 of the Evidence Act on which reliance was placed is a proof of such fact which would invalidate any document such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration, or mistake in fact or law.*

*…………………………………………………….*

*29. <u>The respondents were free to prove fraud in execution of the sale deed. However, factually, the respondents have not alleged any fraud in their suit or in the written statement in the suit filed by appellant No. 1. The feigned ignorance about the nature of document cannot be said to be an instance of fraud. In the absence of any plea or proof of fraud, respondent No.1 is bound by the written document on which he admitted his signatures and of his wife. There is no oral evidence which could prove fraud, intimidation, illegality or failure of consideration to permit the</u>*

> *<u>respondents to lead oral evidence to dispute the sale deed dated 14.9.1970.</u> Therefore, the judgments referred to by Mr. Mehta are of no help to support his arguments. Thus, the findings recorded by the First Appellate Court as affirmed by the High Court are clearly erroneous in law and are, thus, set aside."*
>
> (emphasis supplied)

Learned counsel for the plaintiff-respondent further places reliance on to the judgment in the case of **Kirpal Kaur & Anr. vs. Ritesh & Ors. [2022 (3) BLJ 277 (SC)]** and more particularly paragraph nos. 6, 7 and 8 thereof :-

> *"6. On a careful consideration of the agreement dated 11.02.2004, the first appellate Court and the High Court have observed and held that the agreement dated 11.02.2004 cannot be said to be a loan agreement and/or security document, as alleged by the defendants. We have also gone through and considered the agreement dated 11.02.2004. On reading the entire agreement, it cannot be said that the agreement dated 11.02.2004 can be said to be a loan agreement and/or security document. Merely because in the document the purpose of sale of the property was stated to be for the marriage expenses, the document which otherwise can be said to be an agreement to sell, will not become a loan agreement and/or security document. If the*

*agreement as a whole is read, we find that it is an agreement to sell. Both, the first appellate Court and the High Court have rightly not accepted the case on behalf of the defendants that the agreement is a loan agreement and/or security document. At this stage, it is required to be noted that as such it was never the case on behalf of the defendants before the trial Court that the agreement is a loan agreement and/or security document. Before the trial Court, the defendants denied totally the very execution of the agreement and receipt of Rs.3.50,000/-, which has been rightly disbelieved even by the trial Court. It appears that before the first appellate Court, for the first time, the defendants came out with a case that the agreement is a loan agreement and/or security document.*

*7. Once the execution of the agreement to sell for a sale consideration has been believed and it has been found that Jai Parkash and thereafter, the original plaintiffs I were always ready and willing to perform their part under the agreement and in fact they remained present before the Sub Registrar, Nilokheri on 10.02.2005, which has been established and proved, the decree for specific performance is rightly passed by the first appellate Court, which is rightly confirmed by the High Court. In the facts and circumstances, clauses (a) & (c) of Section 20 of the Specific Relief Act shall not be applicable and/or attracted. We are in complete* *agreement with the view taken by the first appellate Court and the High Court. However, at the same time to do the complete justice between the parties and in exercise of powers under Article 142 of the Constitution of India, we direct the original plaintiffs to pay additional Rs.3,50,000/- to the appellants - original defendants, over and above the balance sale consideration of Rs.50,000/- (Rs.50,000/- to be paid with 6% interest from the date of execution of the Agreement to Sell i.e., 11.02.2004 to actual payment). It is further directed that on such payment the original defendants-appellants herein shall execute the sale deed in favour of respondents herein - original plaintiffs.*

*8. In view of the above and for the reasons stated above, the present appeal fails and deserves to be dismissed and is accordingly dismissed. No order as to costs."*

43. With respect to next contention of learned counsel for the defendant-appellant that the agreement to sell not being registered, the same would not be admissible, the Court finds no merit in the said submission. As submitted by learned counsel for the plaintiff-respondent, section 17(1A) of the Registration Act read with section 53A of the Transfer of Property Act in view of their amendments in the year 2001, require registration of an agreement to sell only when possession of the immovable

property is delivered and accepted under the agreement and that too for a limited purpose of protection under section 53A of the Transfer of Property Act and not otherwise.

44. From perusal of the contents of the documents on record including the oral and documentary evidence led by the parties and in view of the discussion made herein above, this Court comes to the conclusion that so far as the agreement to sell (Exhibit-6) is concerned, it has been the consistent case of the defendant-appellant that he did sign the document but did not read the contents thereof nor accepted the same to be anything more than a receipt in token of a friendly transaction. From the detailed reasons given herein above, this Court comes to the conclusion that the defendant-appellant was well versed in the language of English having received education from class 6 till B.Com. in English medium, had read the contents of the document and having read the contents and fully understanding the same had put his endorsement on the document not once but twice ie on 6.6.2009 and 26.9.2009. The story of the defendant-appellant that the husband of the plaintiff wanted to keep money with the defendant also cannot be believed for the reason that Rs.3 lacs out of Rs.4 lacs in the first transaction and Rs.3 lacs in the second transaction ie total of Rs.6 lacs admittedly received

by the defendant out of the total of Rs.7 lacs was paid by Demand Draft drawn on different Banks. The cash component which is also admitted was only of Rs.1 lac. The plaintiff was always ready and willing to perform her part of the contract and the defendant-appellant has not been able to show any statutory bar in the defendant selling the mortgaged property.

45. For the reasons aforesaid, the Court finds no merit in the appeal filed by the defendant-appellant. The learned trial Court by its judgment dated 7.8.2017, rightly decreed the suit in favour of the plaintiff-respondent.

46. The appeal is dismissed.

**(Partha Sarthy, J)**

Saurabh/-
Avinash/-

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| **AFR/NAFR** | NAFR |
| **CAV DATE** | 08.08.2022 |
| **Uploading Date** | 05.04.2023 |
| **Transmission Date** | |