

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.32 of 2018

1. Md. Allauddin and Anr
2. Md. Sadra @ Md. Sadri Alam, both sons of Late Bilat, resident of Village-Naulakhia, Ward No. 03 Under Madhepur Nagar Parishad, P.S. and District-Madhepura.

... .. Appellant/s

Versus

Smt. Mira Devi @ Meera Devi wife of Satya Narayan Bhagat @ Vijay Kumar Bhagat, resident of Ward No. 3, under Madhepura Nagar Parishad, P.S. and District- Madhepura.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Gopal Kumar Jha, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

10 20-04-2023 This Second Appeal has been filed against the judgment and decree dated 31.10.2017 passed in Title Appeal No. 55 of 2009 by the District Judge, Madhepura whereby, judgment and decree dated 25.06.2009 passed in Title Suit No. 86 of 2000 by the learned Civil Judge(Senior Division-II, Madhepura) has been affirmed.

2. The plaintiffs' case in short is that one Satya Narayan Bhagat husband of the defendant agreed to sale 28 decimals of disputed land for valuable consideration of Rs. 31,000/- and after receiving Rs. 21,000/- the husband of the defendant namely Satya Narayan Bhagat executed an agreement for sale on 17.09.1997 in favour of the plaintiffs. Further case of



the plaintiffs is that it was also agreed between the parties that Satya Narayan Bhagat after receiving remaining consideration amount of Rs. 10,000/- will execute sale deed in favour of the plaintiffs and further case of the plaintiffs is that after executing the deed of agreement for sale shall, deliver the possession to the plaintiffs over the suit land over which the plaintiffs are coming in possession. Further case of the plaintiffs is that the plaintiffs all along remained willing and ready to perform their part of contract ready with the remaining consideration amount of Rs. 10,000/- but the defendant and her husband were never ready to perform their part of contract. He contended that Satya Narayan Bhagat did not meet with the plaintiffs since 1999 and whenever the defendant was asked about the whereabouts of Satya Narayan Bhagat, the defendant did not pay heed to his request. It is also pleaded that the defendant did not execute sale deed and therefore the necessity to file the suit arose. Further, case of the plaintiffs is that on 19.07.2000 the plaintiffs sent a pleader notice through registered post with a request to receive the remaining consideration amount and execute sale deed of the suit land in favour of the plaintiffs to which the defendant replied with false accusation and refused to execute the sale deed and it is also pleaded that in order to purchase 4 kattha of



land of description under Khata No. 1087, Plot No. 9477 (old), Plot No. 13369 (new) in the year 1996 in the month of April an agreement was entered between plaintiff and Satya Narayan Bhagat for which Rs. 20,000/- was paid to Vijay Bhagat in presence of different persons on 09.04.1996 and it was agreed that a registered sale deed shall be executed by him in favour of plaintiffs on 10.04.1996 but Satya Narayan Bhagat did not turn up there, thereafter the plaintiffs sent a registered pleader notice through his lawyer, Shri Shambhu Narayan Yadav on 26.09.1996 and after receiving the notice, instead of executing sale deed a proceeding under Section 107 of Cr.P.C. was initiated between the plaintiffs and Vijay Bhagat @ Satya Narayan Bhagat in which compromise took place and it was agreed that if plaintiffs pay earnest money of Rs. 31,000/- then the sale deed shall be executed and accordingly the plaintiffs paid the amount of Rs. 31,000/- to Satya Narayan Bhagat, who executed the Zerbeyanama on 17.09.1997.

3. On the other hand, Meera Devi wife of Satya Narayan Bhagat @ Vijay Bhagat defendant filed her written statement and contended that the case set up by plaintiffs is totally false. She stated in her written statement that Satya Narayan Bhagat has never taken a single rupee from the



plaintiffs and the entire statements and contents of the plaint regarding so called suit for payment of price or the execution of so called Zerbeyanama with respect to the suit land or to any other land was simply concocted by the plaintiffs and therefore if any Zerbeyanama alleged to have been executed by Satya Narayan Bhagat is produced in the Court on behalf of the plaintiffs the same must be false, frivolous and forged. The contention of the defendant is that the suit land was never handed over to the plaintiffs. They were never in possession over any inch of the suit land. Further case of the defendant is that Satya Narayan Bhagat (husband of the defendant no. 1) was genius and talented but after passing matriculation examination he began to suffer from serious mental disorder and actually he was quite unable to decide as to what is right and what is wrong and in the year 1996 he had gone to Patna to attend teachers' conference which was scheduled to be held in the month of December, 1996 and from the conference he never returned home and he is still traceless since then. Defendant no. 2 (father of Satya Narayan Bhagat) has already filed a criminal case bearing Case No. C-585 of 2000 against the plaintiffs and their friends besides this the father-in-law of the defendant no. 1 also lodged a Sanha petition of 05.01.1997 to the effect that her



husband was traceless and suspected that he might have been kidnapped by the plaintiffs due to ulterior motive.

4. After analyzing the documents and evidences, oral as well as documentary, the learned trial court as well as the appellate court has held that there is no direct evidence on record as to when and how the earnest money was paid to Satya Narayan Bhagat. The appellate court further observed that there is no recital in execution column of Exhibit-1 Zerbeyanama regarding payment of 21,000/- at the time of execution of Exhibit-1 because it bears signature on leaf. The said Zerbeyanama has been challenged by the defendant to be a forged one and was never executed by Satya Narayan Bhagat. Exhibit-C shows that on 04.01.1997 a Sanha was lodged before Madhepura, Police Station regarding Satya Narayan Bhagat being traceless since 15.12.1996. In absence of any contradictory document it is clear that Satya Narayan Bhagat was traceless since 15.12.1996 and when this fact is proved that Satya Narayan Bhagat was traceless and is still traceless then how a document like Exhibit-1 is said to be genuinely executed by him and further held that Exhibit-1 Zerbeyanama is not a genuine one and there is no legal value of the deed. The learned appellate court also observed that in a suit for specific



performance of contract the plaintiffs has to specifically plead that they are all along ready and willing to pay the balance consideration money. In absence of specific pleadings the case of the plaintiffs is bound to fail. The appellate court further held that plaintiffs and Satya Narayan Bhagat did not enter into the valid contract to sell the suit land for a valid consideration of Rs. 31,000/- and the plaintiffs did not pay Rs. 21,000/- as earnest money to Satya Narayan Bhagat.

5. On perusal of impugned judgment and material available on record it is clear case of plaintiffs that contract between Satya Narayan Bhagat and plaintiffs was made on 17.09.1997 being an unregistered agreement for sale on stamp paper which was purchased by the plaintiffs himself in his name.

6. The defendant has proved her case regarding Satya Narayan Bhagat being traceless since 15.12.1996. The wife of Satendra Narayan Bhagat had lodged a Sanha petition dated 05.01.1997 to the effect that her husband was traceless, might be kidnapped by the plaintiffs due to ulterior motive. Execution of agreement for sale dated 17.09.1997 is falsified by Sanha dated 05.01.1997 which was filed by the wife of Satya Narayan Bhagat. The plaintiffs' case is on the basis of unregistered



agreement for sale and also claimed that on the date of execution of agreement for sale the possession of land under agreement for sale was given to him. The said claim cannot be sustained in view of Section 53 A of Transfer of Property Act.

7. Moreover, the said agreement for sale had not been proved by the plaintiffs. It is apparent from the case of the plaintiffs, the suit was filed in the year 2000 while Satya Narayan Bhagat is traceless since December, 1996 therefore, within seven years the instant suit was filed against heirs of Satya Narayan Bhagat. It is admitted case of the plaintiffs that the basis of the suit is Zerbeyanama (agreement for sale) which was executed on 17.09.1997 by the husband of defendant no. 1, namely, Satya Narayan Bhagat @ Vijay Bhagat but Satya Narayan Bhagat has not been made party. In that view of the matter, the suit is bad for non-joinder of necessary party i.e. Satya Narayan Bhagat.

8. Considering the facts and circumstances of the case and evidences both oral and documentary recorded in the judgment as discussed above, it is quite apparent that the plaintiffs and Satya Narayan Bhagat did not enter into valid contract to sale the suit land for valid consideration and plaintiffs have not proved the factum of payment of earnest



money to Satya Narayan Bhagat and Satya Narayan Bhagat did not execute the alleged agreement for sale dated 17.09.1997 in favour of the plaintiffs. Satya Narayan Bhagat did not deliver the possession over the suit land to the plaintiffs.

9. In the aforesaid background, the judgment and decree of the courts below are covered by the findings of facts and no question of law much less substantial question of law arises for consideration in the instant Second Appeal which is accordingly, dismissed.

(Khatim Reza, J)

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